

WSR 12-11-009
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed May 3, 2012, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-121.

Title of Rule and Other Identifying Information: Revisions to the following WACs are needed to implement Initiative 1183: Chapter 314-05 WAC, Special occasion licenses; chapter 314-11 WAC, General requirements for licensees; chapter 314-13 WAC Retail licensees purchasing beer, wine and spirits; chapter 314-24 WAC, Domestic wineries and domestic wine distributors; chapter 314-27 WAC, Interstate commercial common passenger carriers; chapter 314-38 WAC, Permits; chapter 314-42 WAC, Liquor control board operations; chapter 314-44 WAC, Licensed agents; chapter 314-45 WAC, Serving and donating of liquor by suppliers at trade conventions of licensees; chapter 314-52 WAC, Advertising; and chapter 314-64 WAC, Liquor samples. The following WACs need to be repealed: Chapter 314-37 WAC, Nonstate liquor stores and chapter 314-76 WAC, Special orders.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Lacey, WA 98504, on June 27, 2012, at 10:00 a.m.

Date of Intended Adoption: July 11, 2012.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 664-9869, by June 27, 2012.

Assistance for Persons with Disabilities: Contact Karen McCall by June 27, 2012, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Current rules need to be revised to implement Initiative 1183 that passed on November 8, 2011.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.310, and section 215 of I-1183 (repealed RCWs).

Statute Being Implemented: RCW 66.24.055, 66.24.-160, 66.24.360, 66.24.630, 66.28.070, 66.20.010, 66.24.380, 66.28.040, 66.28.060, 66.28.330, 66.28.180, 66.44.340.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal has a positive impact on businesses or individuals who wish to sell spirits in the state of Washington.

A cost-benefit analysis is not required under RCW 34.05.328.

May 3, 2012
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 09-02-013, filed 12/29/08, effective 1/29/09)

WAC 314-05-020 What is a special occasion license?

(1) Per RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving for on-premises consumption; and

(b) Spirits, beer and wine in original, unopened containers for off-premises consumption.

(2) Special occasion licensees are limited to twelve days per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for this license is \$60 per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.

(5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.

AMENDATORY SECTION (Amending WSR 11-23-046, filed 11/9/11, effective 12/10/11)

WAC 314-05-030 Guidelines for special occasion license events. (1) The special occasion license must be posted at the event.

(2) Special occasion licensees may get alcohol for the event only from the following sources:

(a) Spirits ((must be purchased from a Washington state-run or contract liquor store;

((b))), beer, and wine must be purchased at retail from a licensed retailer(()); from a spirits, beer, or wine distributor(()); from a distiller, a craft distiller, a domestic brewery, microbrewery, or winery(()) acting as a distributor of its own product(()); or from a certificate of approval holder with a direct shipping to Washington retailer endorsement. Special occasion licensees are allowed to pay for beer or wine used for the special occasion event immediately following the end of the special occasion event; and

((c))) (b) Per RCW 66.28.040, in state breweries and wineries, out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited

representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer, wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations. ((Spirits donated to a special occasion licensee must be purchased from a state or contract liquor store.))

(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.

(4) Per RCW ((66.28.010)) 66.28.310, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.

(a) Wineries and distilleries may pour at any special occasion event.

(b) Wineries or breweries that are participating in a special occasion event may pay reasonable booth fees to the special occasion licensee. Booth fees must be uniform for all participating wineries and breweries.

(5) Per RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated location(s).

(6) If a special occasion license function is held at an establishment that has a liquor license:

(a) The special occasion function must be held in an area of the premises separate from areas open to the general public during the time the special occasion function is occurring, and the licensed premises' liquor cannot be sold or served in the same area(s) as the special occasion license function.

(b) The liquor licensee cannot charge for the liquor purchased by the special occasion licensee for service at the special occasion event, but can charge for room usage, services, etc. The liquor licensee must sign the special occasion application giving permission for the special occasion licensee to bring and sell their alcohol at the liquor licensed premises.

(c) The special occasion license will not be issued for use at premises whose liquor license will be suspended on the date(s) of the scheduled event.

AMENDATORY SECTION (Amending WSR 08-03-081, filed 1/16/08, effective 2/16/08)

WAC 314-11-025 What are the forms of acceptable identification? (1) ((Per RCW 66.16.040,)) Following are the forms of identification that are acceptable to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol:

(a) Driver's license, instruction permit, or identification card of any state or province of Canada, or "identicard" issued by the Washington state department of licensing per RCW 46.20.117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) If the identification document has an expiration date, a person may not use the document after the expiration date to verify his or her age.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

WAC 314-11-040 What duties can an employee under twenty-one years of age perform on a licensed premises? A person must be twenty-one years of age or older to be employed in the sale, handling, or service of liquor, except as provided in this chapter.

(1) Per RCW 66.44.340 and RCW 66.44.350, persons between eighteen and twenty-one years of age may perform the following duties:

	Duties 18, 19, and 20 year old employees may perform, as long as there is a person twenty-one years of age or older on duty supervising the sale of liquor	Duties 18, 19, and 20 years old employees may not perform
(a) In a grocery store or beer/wine specialty shop:	<ul style="list-style-type: none"> ■ Sell, stock, and handle beer and wine; and ■ Deliver beer and/or wine to a customer's car with the customer (for the purposes of this rule, there is no minimum age requirement for an employee of a grocery store or a beer/wine specialty shop to deliver beer and/or wine to a customer's car with the customer). 	Supervise employees who sell, stock, or handle beer and/or wine.
(b) In a spirits retail business:	<ul style="list-style-type: none"> ■ As long as there are at least two supervisors at least twenty-one years of age on duty, persons 18, 19, and 20 years old may sell, stock, and handle spirits. ■ Deliver spirits to a customer's car with the customer (for purposes of this rule, there is no minimum age requirement for an employee of a spirits retailer to deliver spirits to a customer's car with the customer). 	Supervise employees who sell, stock, or handle spirits.
((b))) (c) In an establishment that sells liquor for on-premises consumption:	<ul style="list-style-type: none"> ■ Take orders for, serve, and sell liquor in areas classified as open to persons under twenty-one years of age; and 	Functions of a bartender, including:

	Duties 18, 19, and 20 year old employees may perform, as long as there is a person twenty-one years of age or older on duty supervising the sale of liquor	Duties 18, 19, and 20 years old employees may not perform
	<ul style="list-style-type: none"> ■ Enter areas designated as off-limits to persons under twenty-one years of age to perform duties such as picking up liquor for service in other parts of the establishment; cleaning up, setting up, and arranging tables; delivering messages; serving food; and seating patrons; provided the employee does not remain in the area any longer than is necessary to perform the duties. 	<ul style="list-style-type: none"> ■ Mixing drinks; ■ Drawing beer or wine from a tap; ■ Pouring beer or wine anywhere except at the patrons table; and ■ Providing an employee spirits, beer by the pitcher or glass, or wine by the carafe or glass for delivery to a customer.
(d) In a spirits retail business:		Supervise employees who sell, stock, or handle spirits.

(2) Per RCW 66.44.316 and 66.44.318, the following persons that are eighteen, nineteen, or twenty years of age may remain on licensed premises or portions of premises that are restricted from persons under twenty-one years of age, but only during the course of his or her employment:

(a) Persons performing janitorial services during the hours when there is no sale, service, or consumption of liquor on the premises;

(b) Employees of amusement device companies for the purpose of installing, maintaining, repairing, or removing any amusement device;

(c) Security or law enforcement officers and firefighters during the course of their official duties and if they are not the direct employees of the licensee; and

(d) Professional musicians, per WAC 314-11-045.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-11-085 Do I have to sell liquor at a certain price? (1) ((Retail)) Liquor licensees must sell beer, wine, and spirits ((to customers)) at or above the licensee's acquisition cost.

(2) An exception to this requirement is that on-premises retail licensees may give a customer a drink free of charge under limited circumstances, such as a customer's birthday or to compensate for unsatisfactory products or services. Free liquor may not be used in advertising or as part of a promotion.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-11-097 Credit on nonliquor food items—Conditions—Recordkeeping. (1) Notwithstanding the provisions of WAC 314-12-140, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under

RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food products on thirty days' credit terms to retailers. Complete and separate accounting records shall be maintained for a period of three years on all sales of nonliquor food products ((to ensure that such persons are in compliance with RCW 66.28.010)).

(2) Nonliquor food products include all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products.

(3) For the purpose of this section, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

(4) If the board finds in any instance that any licensee has violated this section by extending or receiving credit in excess of the thirty days as provided for by this section, then all licensees involved shall be held equally responsible for such violation.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-11-100 Can the board or another government agency seize liquor? Under the provisions of RCW 66.08.030 ((2)(z)) (20), liquor enforcement officers and other peace officers are authorized to seize, confiscate, destroy or otherwise dispose of any liquor that is manufactured, sold, or offered for sale within the state in violation of the provisions of Title 66 RCW and/or Title 314 WAC.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-11-105 What can the board do with lawfully seized liquor? (1) Per RCW 66.08.030 ((2)(z)) (20) and chapter 66.32 RCW, the board may destroy lawfully seized liquor under the following conditions:

(a) The board must maintain a record of the type, brand, and amount of liquor seized for at least one year.

(b) The lawfully seized liquor may be destroyed only after:

(i) The board's charges of a violation of Title 66 RCW or board regulations have been sustained after an administrative proceeding pursuant to chapter 314-29 WAC as now or hereafter amended, in which the liquor to be destroyed has been the subject of, or evidence in, the administrative proceeding; or

(ii) The board's charges of a violation of Title 66 RCW or board regulations have been admitted or are not contested by the person from whom the liquor was seized and the liquor seized was the subject of the charged violation; or

(iii) The liquor was seized pursuant to lawful arrest and liquor was held as evidence in a criminal proceeding where a final disposition has been reached; or

(iv) When no administrative or judicial proceedings are held, all parties who claim a right, title, or interest in the seized liquor have been given notice and opportunity for a hearing to determine his or her right, title, or interest in the

subject liquor. Claims of right, title, or interest in seized liquor must be made to the board, in writing, within thirty days of the date of seizure.

(2) If the liquor lawfully seized is in its original, sealed container, the board may either:

(a) ~~(Return the product to a state liquor store for discounted resale;)~~ Sell the unopened beer, wine, or spirits to the distributor selling the product at a negotiated price. The bill of sale must be kept for three years; or

(b) Upon written request from a law enforcement agency, provide the liquor to the law enforcement agency for bona fide training.

AMENDATORY SECTION (Amending WSR 01-06-014, filed 2/26/01, effective 3/29/01)

WAC 314-11-110 What can government agencies other than the board do with lawfully seized liquor?

Under the provisions of chapter 66.32 RCW, government agencies may, after obtaining the approval of the board and under the supervision of the board, dispose of lawfully seized liquor as follows:

(1) ~~((The government agency may sell unopened, salable spirituous liquor, beer, and wine that was purchased from the board to the board under the following conditions:~~

(a) ~~The government agency must provide the board with a listing of the liquor and make the liquor available for examination and review;~~

(b) ~~The board will issue a purchase order for the liquor;~~

(c) ~~When the government agency is from within the state of Washington and the liquor was originally purchased from the board, the board will pay the licensee price listed in the official board price list then in effect, less a handling charge of 13.5 percent.~~

(d) ~~When the government agency is a federal agency, or when the government agency is from within the state of Washington but the liquor was not originally purchased from the board, or the liquor is no longer handled by the board, the board will pay a negotiated amount not to exceed ninety percent of the original approximate cost price from the distillery or manufacturer including federal tax and duty; and~~

(e) ~~After receipt of the board purchase order, the government agency that is selling the liquor will invoice the board per the prices listed on the purchase order.~~

(2)) The government agency may sell opened containers of lawfully seized liquor back to the spirits, beer, and wine restaurant licensee from whom seized~~((, under the following conditions:~~

(a)) ~~if the licensee is going out of business and the liquor will be used for the personal use of the licensee((,~~

(b) ~~The liquor must be sold at a negotiated price after the licensee pays the board an amount to be determined by the board in lieu of the spirit, beer, and wine restaurant discount and tax exemption in effect at that time. If the licensee does not purchase the opened bottles of liquor within the period of redemption, the liquor must be destroyed)).~~

((3))) (2) The government agency may sell unopened beer ~~((and/or)), wine, or spirits~~ to the distributor selling the beer ~~((and/or)), wine, or spirits~~ at a negotiated price~~((, per the procedures outlined in WAC 314-20-070 and 314-24-210, as~~

~~now or hereafter amended. Copies))~~. A copy of the inventory and bill of sale must be ~~((furnished to the board))~~ kept for three years.

((4))) (3) The government agency may sell unopened salable wine and/or beer to appropriately licensed retailers at a negotiated price under the following conditions:

(a) The product must meet the quality standards set forth by its manufacturer~~((,))~~; and

(b) Copies of the inventory and bill of sale must be furnished the board.

((5))) (4) The government agency may ship the liquor out of the state of Washington.

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-13-010 Who can retail licensees purchase beer, wine, and spirits from?

	Definition	Who licensees can purchase from
Beer	RCW 66.04.010(3)	<ul style="list-style-type: none"> • A licensed Washington distributor (including a licensed Washington brewery that distributes its own product) • A licensed certificate of approval holder with a direct shipping to Washington retailer endorsement • ((Washington state liquor control board store or agency))
Wine	RCW 66.04.010(((39))) (46)	<ul style="list-style-type: none"> • A licensed Washington distributor (including a licensed Washington winery that distributes its own product) • A licensed certificate of approval holder with a direct shipping to Washington retailer endorsement • ((Washington state liquor control board state run or contract liquor store)) A Washington licensed grocery store with a wine retailer reseller endorsement (up to 24 liters per single sale per day)
Spirits	RCW 66.04.010(((35))) (41)	<ul style="list-style-type: none"> ((A Washington state liquor control board state run or contract liquor store)) • A Washington spirits distributor • A Washington licensed distiller or craft distiller • A licensed spirits certificate of approval holder with a direct shipping to retailer endorsement • A spirits retail licensee may sell to an on-premises licensee (up to 24 liters per single sale per day)

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-13-015 What method of payment can a retailer use to purchase spirits, beer, or wine from an industry member? Per RCW ((66.28.010(1))) 66.28.270, a retail licensee must pay cash for spirits, beer, and wine prior to or at the time of delivery by an industry member. The board will recognize the following forms of payment as cash payment for the purposes of this title, under the conditions outlined in this rule and in WAC 314-13-020.

(1) **Checks**, under the provisions of WAC 314-13-020.

(2) **Credit/debit cards**, under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both the retailer and the industry member, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for board review.

(e) The credit or debit card charge must be initiated by the industry member no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT)**, under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the retailer and the industry member, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the retail licensee must enter into a written agreement with the industry member specifying the terms and conditions for EFT as payment for alcohol or nonalcohol beverages.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for board review.

(f) The electronic funds transfer must be initiated by the retailer or industry member no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a retailer to delay payment on EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-13-020 What if a check, EFT transaction, or credit/debit card transaction is reported as having nonsufficient funds (NSF)? Any transaction reported as having nonsufficient funds (NSF) will be considered an

extension of credit, in violation of RCW ((66.28.010(1))) 66.28.300. If a transaction is reported as NSF:

(1) The retailer must pay the full amount of the transaction to the industry member by 3 p.m. on the first business day following receipt of the NSF report.

(2) ~~((If the retailer does not make payment by this time, the industry member must report the NSF transaction to the their local board enforcement office by 5 p.m. the next business day following receipt of the NSF report.)~~

~~((3) The local board enforcement office will contact the retailer, who will have until 3 p.m. the next business day to pay the NSF transaction. If the retailer does not pay the industry member by this time, the board will issue an administrative violation notice to the retailer.)~~

~~((4)) Until the NSF transaction is paid:~~

~~((a) The industry member or spirits retailer licensee who received the NSF transaction will not deliver any spirits, beer, or wine to the retailer; and~~

~~((b) It is the responsibility of the retailer to not receive any spirits, beer, or wine from any industry member or spirits retailer licensee.)~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-13-025

How do retail licensees purchase spirituous liquor at a discount from the board?

WAC 314-13-030

What method of payment can a retailer use to purchase spirituous liquor from the board?

WAC 314-13-040

Do retail licensees have to sell liquor at a certain price?

AMENDATORY SECTION (Amending WSR 07-02-076, filed 12/29/06, effective 1/29/07)

WAC 314-24-040 Wine labels—Federal certificate of label approval required—Labels to be submitted. (1) No wine shall be imported or sold within the state of Washington until the certificate of approval holder, or domestic winery, or United States importer of foreign wine, shall have ~~((obtained from)) submitted to the board ((a))~~:

(a) **The federal certificate of label approval** for such wine~~((a))~~:

~~((1) A request for certificate of label approval must be submitted to the board on forms prescribed by the board, together with the following:~~

~~((a)) which has been issued by the Tax and Trade Bureau, U.S. Treasury Department; and~~

~~((b)) One label of the brand and type for which ~~((approval)) tracking~~ is requested for wines under seven percent alcohol by volume~~((a))~~; and~~

~~((b)) One copy of the federal certificate of label approval for such wine which has been issued by the Bureau of Alcohol, Tobacco, and Firearms, U.S. Treasury Department).~~

(2) Any change in label or product which requires reissuance of federal approval under the provisions of 27 CFR Part 4, must also be submitted to the board in accordance with the foregoing provisions of this regulation.

(3) Every producer, importer, bottler, distributor, or wine certificate of approval holder shall, upon request of the board or its authorized representative, furnish without cost to the board, samples of any brand of wine upon its premises for the purpose of analysis in order to determine whether the wine conforms to the quality standards set by the board in WAC 314-24-060 and conforms with commercial standards.

(4) No label shall be used that is misleading.

(5) No label ((will be approved which)) shall be used that is designed to be ((especially)) appealing to children or other persons under legal age to consume. Persons who appear to be under legal age to consume may be depicted on a label when, in the discretion of the board, the depiction is dignified and does not promote illegal consumption of liquor.

(6) Wineries are not required to ((obtain a certificate of label approval from)) submit labels for tracking to the board for wine sold directly to Washington consumers under a direct shipper's permit. Wine labels may not be misleading and may not be designed to appeal especially to persons under the age of twenty-one.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington. (1) Domestic wineries may purchase and receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in ((section 23-D of the Washington State Liquor Act ()))RCW 66.24.-140(())), or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.-010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with the board, not later than the tenth day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1), and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery returning previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor control board.

(e) A domestic winery must keep on file for audit purposes clear source records (shipping documents, etc.) with monthly reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

AMENDATORY SECTION (Amending WSR 00-17-065, filed 8/9/00, effective 9/9/00)

WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation. (1) A domestic winery holding a proper retail license, pursuant to chapter 66.24 RCW, may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW ((66.28.010)) 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW ((66.28.040)) 66.28.295.

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A winery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the winery premises that is not of its own production.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-24-180 Wine distributors, wine importers—Certain rights granted. (1) Wine distributors may sell to ((the board)) retailers, export wine from the state, and purchase wine from or sell wine to another wine distributor.

(2) Wine distributors must sell and deliver product from their licensed premises.

(3) Wine importers may sell to the board, export wine from the state, or sell to wine distributors, but may not sell to another wine importer or to retailers.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-24-190 Wine suppliers and distributors. ((RCW 66.28.180 requires wine distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.))

(1) **Definitions((—))**—For the purposes of this chapter:

(a) ((A "price list" means a declaration of the prices at which any and all brands of wine and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each supplier functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of wine sold by the supplier or distributor shall be available to retailers within the state.))

((b)) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

((e))) (b) A "wine distributor" means a distributor selling to a retailer, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **((Products and price lists))**—If a wine supplier or distributor lists selected items on which prices are temporarily reduced, the prices must clearly reflect all items and the selling price. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

((3))) Distributor changes((—)):

(a) The following guidelines apply when a wine supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that he/she wishes to change his/her current distributor and appoint a new distributor to be effective immediately.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

((4) Price lists for new distributors)—When the board issues a new wine distributor license, the licensee must have a price list available.

((5))) (3) Accommodation sales((—))—The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-27-010 Liquor purchases by ((Class)) Interstate Common Carrier licensees—Reports((—Payment of markup and taxes—Sales by in-state beer and wine suppliers)). (1) Any ((employee)) licensee authorized by the board ((and/or any licensed importer and/or distributor)) to sell liquor may sell liquor to the holder of ((a Class)) an Interstate Common Carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor ((by the board)) to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export ((from the state and, as such, will not be subject to collection of the state liquor taxes at the time of purchase by the licensee)).

(3) Every federally licensed interstate commercial common passenger carrier, holding an Interstate Common Carrier license ((pursuant to chapter 245, Laws of 1975 1st ex. sess.)) shall, on or before the ((fifteenth)) twentieth day of each month, make a report to the board, upon forms approved by the board, of all spirituous liquor, beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

((At the time of filing the report prescribed herein, such common carrier shall pay to the board the board's markup on spirituous liquor, and state liquor taxes as applicable, on such spirituous liquor, beer and wine so served or sold, in an amount to approximate the revenue that would have been realized from such markup and taxes had such alcoholic beverages been purchased for use in the state.))

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state. ((Such importers and distributors who have paid the taxes imposed by RCW 66.24.290 or

~~66.24.210 on beer or wine so sold may claim refund of the taxes under procedures set forth in WAC 314-20-010 or 314-24-110, as applicable.)~~

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

WAC 314-30-010 Sales by manufacturers. (1) Manufacturers licensed in accordance with RCW 66.24.150 may sell within the state:

- (a) Spirituous liquor only to ~~((the board or to an authorized vendor of the board))~~ spirits distributors;
- (b) Wine products only to wine distributor~~((s licensed in accordance with RCW 66.24.200))~~ licensees;
- (c) Beer products only to beer ~~((certificate of approval holders as authorized by RCW 66.24.270 who also hold an importer's license as authorized by RCW 66.24.260))~~ distributor licensees; or
- (d) To permit holders as authorized by ~~((Title 66))~~ RCW 66.20.010 (7) through (10).

(2) The first spirits distributor, wine distributor, or beer ((certificate of approval holder with a beer importer's license)) distributor to receive spirits, wine, or malt beverages from a distiller, manufacturer, rectifier, or bottler shall be liable for the fees and/or taxes due.

(3) Manufacturers selling spirits, wine, or malt beverage products will be considered a supplier and will be required to meet the requirements of WAC ~~((314-24-200 and 314-20-105))~~ 314-23-005, 314-24-190, and 314-20-100 respectively.

(4) Manufacturers selling spirits to a licensed spirits distributor, wine to a licensed wine distributor, or beer to a licensed beer ((certificate of approval holder who also has a beer importer's license)) distributor shall file monthly reports with the board on forms prescribed by the board showing the quantity of liquor shipped to each above referenced licensee during the preceding month. Such report shall be submitted on or before the twentieth day of the month following the month of sale or delivery.

(5) Failure to make such report at the time prescribed will be sufficient cause for the board to forthwith suspend or cancel the license privilege of the manufacturer. When the twentieth day of any month falls on a Sunday, or a legal holiday, the report may be filed not later than the close of business the next business day.

Chapter 314-36 WAC

((LIQUOR)) IMPORTERS, PUBLIC STORAGE WAREHOUSES AND IMPORTATION OF LIQUOR

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-040 Principal office—Record. (1) Each ((liquor)) spirits, beer or wine importer shall establish and maintain a principal office within the state where full and complete records are kept for three years of:

- (a) All importations;
- (b) All storage;
- (c) All removals; and

(d) All exportations of liquor.

(2) Records are to be kept in such manner and in such form as required by the board.

(3) Each ~~((liquor))~~ spirits, beer or wine importer shall keep the board informed at all times of the location of such principal office.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-060 Public storage warehouses. (1) No public storage warehouse shall accept, receive, or store or otherwise handle any ~~((liquor))~~ spirits, ~~((including))~~ beer, or wine, without first obtaining from the Washington state liquor control board a letter of authorization.

(2) No consumption of ~~((liquor))~~ spirits, ~~((including))~~ beer, or wine, is allowed at public storage warehouses.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-080 Authorization for private liquor storage warehouse. A holder of a ~~((liquor))~~ spirits, beer or wine importer's license, who maintains a storage warehouse and who desires to store ~~((liquor))~~ spirits, beer, or wine imported under such ~~((liquor))~~ spirits, beer or wine importer's license, shall apply to the board for a letter of authorization. If authorization is granted, the warehouse shall be known as a private liquor storage warehouse.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-090 Liquor shall be stored in original packages. No shipments of liquor shall be accepted or stored in an approved storage warehouse except in original packages or combinations of original packages ~~((as authorized by the board))~~.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-100 Removal of ~~((liquor))~~ spirits. (1) No ~~((liquor))~~ spirits importer or public storage warehouse shall remove ~~((liquor))~~ spirits from any storage warehouse, except:

- (a) For sale and delivery to ~~((the board))~~ a spirits distributor; or
- (b) For export from the state~~(());~~
- (c) For delivery to persons, firms or corporations authorized by Title 66 RCW to receive such liquor products; or
- (d) Liquor may be removed from an authorized private liquor storage warehouse to an authorized public storage warehouse).

(2) Any and all removals of ~~((liquor))~~ spirits must be made in full compliance with the Washington state liquor laws and the rules of the board.

AMENDATORY SECTION (Amending WSR 10-20-085, filed 9/30/10, effective 10/31/10)

WAC 314-36-130 Complete records kept. (1) Each public storage warehouse shall keep full and complete records showing:

- (a) All ((liquor)) spirits received for storage; and
- (b) All removals and exportations.

(2) Records shall ((preserve)) be preserved for three years, all bills of lading or certified copies thereof((, and all authorizations of the board for withdrawals of samples)).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-36-010	Sales between importers.
WAC 314-36-020	Liquor importation—General.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-37-010	Liquor sales in Indian country—Appointment of tribal liquor stores—Qualifications.
WAC 314-37-020	Manufacturer's on-site liquor store appointment—Qualifications.
WAC 314-37-030	Bank credit cards and debit cards.

AMENDATORY SECTION (Amending Order 106, Resolution No. 115, filed 6/16/82)

WAC 314-38-010 ((Special permit to consume liquor on the premises of a business not licensed)) Serve employees and guests permit under Title 66 RCW. (1) The special permit provided by RCW 66.20.010(4) to consume liquor on the premises of a business not licensed under Title 66 RCW shall only be issued to businesses at which the service and consumption of liquor is incidental to, and does not form a portion of, the service the business is engaged in producing or marketing. The permit shall not be used by the holder thereof for purposes of stimulating or increasing business from the general public.

(2) Each permit shall be issued for a period of twelve months from the first day of the month in which it is issued. The fee for each permit issued shall be five hundred dollars.

(3) The permit shall be issued for, and service and consumption of liquor will be limited to, specified hospitality rooms and/or dining rooms which shall be on the premises of the business applying for the permit. A separate permit is required for each business premises at which liquor is to be served or consumed. The general public shall not be permit-

ted in the hospitality or dining room at any time during the service or consumption of liquor.

(4) The permit will authorize the service and consumption of liquor, without charge, by employees and invited guests of the business holding the permit. No sale of liquor will be authorized in any manner, whether by scrip, donation, contribution, or otherwise. No charge of any kind may be made by the permittee to invited guests for admission to the hospitality or dining room, or for any meals or other services provided to them in the hospitality or dining room.

(5) All liquor served or consumed under the permit shall be purchased from a Washington state licensed retailer ((or a Washington state liquor store or agency)) at full retail price.

(6) The permit shall be issued in the name of the business applying for it, and that business shall not allow any other person, business, or organization to utilize the permit. The issuance of any permit by the board shall not be construed as granting a vested right in any of the privileges so conferred, and a misrepresentation of fact found to have been made by the applicant or permittee shall be deemed a lack of good faith and shall constitute good and sufficient cause for the disapproval of a permit application or for the revocation or suspension of any permit issued by the board.

AMENDATORY SECTION (Amending WSR 93-20-031, filed 9/27/93, effective 10/28/93)

WAC 314-38-050 ((Class 4)) Serve employees and guest permit—Purpose—Use. (1) The purpose of a ((Class 4)) serve employees and guests permit as authorized by RCW 66.20.010(4) is to:

(a) Allow for the consumption of liquor products in private businesses; and

(b) Not to compete with liquor licensed establishments.

(2) All liquor served by holders of a ((Class 4)) serve employees and guests permit must be purchased at retail from the board or a retail liquor licensee.

(3) Liquor may not be sold by holders of a ((Class 4)) serve employees and guests permit, but may be provided at no charge for consumption on the premises of the permit holder.

(4) The holder of a ((Class 4)) serve employees and guests permit may serve liquor for no more than twenty-four hours during any weekly (168 hour) period.

(5) While the ((Class 4)) serve employees and guests permit holder may advertise their business services, no liquor service shall be advertised.

AMENDATORY SECTION (Amending WSR 01-15-049, filed 7/13/01, effective 8/13/01)

WAC 314-42-010 Liquor control board administrative director. (1) The purpose of this rule is to ensure efficient and consistent administration of the liquor control board through the delegation of certain administrative functions to an administrative director. The delegation of administrative functions by the board, as provided for in this section, does not alter the board's statutory responsibility to administer Title 66 RCW.

(2) The administrative director will be appointed by, and serve at the pleasure of, the board, and will perform his/her

duties under the general control, management, and supervision of the board.

(3) The following duties are delegated by the board to the administrative director:

(a) Appointing authority as defined by WAC 356-05-040, 356-30-007, and 356-34-011 for all liquor control board employees, with the exception of the director and staff of the policy, legislative, and media relations division as described in subsection (4)((g))(e) and staff that report directly to the board members;

(b) Authorize expenditures of funds from the board approved internal budget;

(c) Purchase, lease, contract, or otherwise acquire any goods, services, and products within the board approved internal budget;

(d) ((Approve liquor purchase orders authorized by the board (this authority may be further delegated);

(e))) Approve uncontested licenses and permits (this authority may be further delegated);

((f)) (e) Assign duties, coordinate agency operations, and establish performance standards and timelines;

((g)) (f) Approve disbursements of excess funds from the liquor revolving fund; and

((h)) (g) Perform other duties of a routine administrative nature identified by the board.

(4) The following duties will not be delegated and will remain functions of the board:

(a) Final approval of agency-wide and division budgets as prepared by the administrative director;

(b) Revocation or suspension of a license or permit;

(c) ((Appeals of price posting actions;

(d))) Appeals of administrative actions taken against liquor and tobacco licensees;

((e)) Approval of product listings and delistings for state liquor stores and agencies;

((f)) (d) Approval of contested liquor license and permit applications; and

((g)) (e) Direct oversight of the policy, legislative, and media relations division and staff that report directly to the board members, including:

(i) Rule making actions,

(ii) Approval of agency-request legislative proposals, and

(iii) The employment, termination, and discipline of the director and staff of the policy, legislative, and media relations division and staff that report directly to the board members.

AMENDATORY SECTION (Amending WSR 11-24-099, filed 12/7/11, effective 1/7/12)

WAC 314-44-005 Agent's license required—Eligible employers defined—Certain classes limited—Bona fide entity defined—Prohibited practices. (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of a person, firm, or corporation within the state of Washington holding any of the following licenses:

(a) A beer certificate of approval ((issued pursuant to RCW 66.24.270 or 66.24.206,)) license;

(b) A beer distributor's license((s));

(c) A brewer's license((s));

(d) A beer importer's license((, a domestic winery));

(e) A wine certificate of approval license;

(f) A wine distributor license((, a wine importer's));

(g) A domestic winery license((, or));

(h) A wine ((distributor's)) importer's license ((within the state of Washington, or));

(i) A spirits certificate of approval license;

(j) A spirits distributor license;

(k) A distiller or craft distiller license; or

(l) A spirits importer license.

(3) An agent's license may be issued to the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer shall apply to the board for such an agent's license for his accredited representatives on application forms prescribed and furnished by the board. This subsection shall not apply to drivers who deliver beer or wine or to domestic wineries or their employees. Employees of a domestic winery must have identification on them that indicates they work for the winery. Identification may be in the form of a winery's business card, employee badge, or similar identification.

((3)) (4) Any person acting as an independent contractor for a winery must have an agent's license. An independent contractor is defined as an independent business person who runs his or her own business that provides services to another individual or business. The independent contractor is a separate business entity. The earnings of a person who is working as an independent contractor are subject to self-employment tax.

((4)) (5) Every firm which applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof that such firm is in fact a bona fide business entity.

((5)) (6) Only the licensed agent of a distiller, manufacturer, importer, or distributor of spirituous liquor may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

((6)) No distiller, manufacturer, importer, distributor of liquor, or agent thereof, shall solicit either in person, by mail or otherwise, any liquor vendor or employee of the board, except the purchasing agent thereof, for the purpose or with the intent of furthering the sale of a particular brand or brands of merchandise as against another brand or brands of merchandise.

(7) No distiller, manufacturer, importer, distributor of liquor, or agent thereof, shall visit any state liquor store or agency for the purpose of exerting influence on employees for sales promotion or to secure information regarding inventory or any other matter relating to sales. They may deliver, or have delivered, and assemble where required, consumer offers and display material that have been approved by the

~~board or its designee. Violation of this section will result in a penalty against all company items, which in appropriate cases could mean a partial or total delisting of those items.~~

~~(8) No distiller, manufacturer, importer, or distributor of liquor, or agent thereof, shall give or offer to any employee of the board any entertainment, gratuity or other consideration for the purpose of inducing or promoting the sale of merchandise.~~

~~((9)) (7) No distiller, manufacturer, importer, or distributor, or agent thereof, shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any retail licensee to induce or promote the sale of liquor, including the payment of tips to such licensees or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.040, and other applicable laws and rules.~~

~~((10) Upon the infraction of any law or regulation by any distiller, manufacturer, importer, distributor, or agent, the board may, in addition to imposing other penalties as prescribed by law, remove such firm's products from the sales list of the board, and/or prohibit the sale of any brand or brands of beer or wine involved as provided in RCW 66.28.030.~~

~~((11)) (8) Upon the termination of the employment of a licensed agent, his employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.~~

AMENDATORY SECTION (Amending WSR 10-20-086, filed 9/30/10, effective 10/31/10)

WAC 314-45-010 Convention defined—Hospitality rooms, display booths, receptions and similar activities—Permits required—Fees—Procedures.

Activities pursuant to RCW 66.20.010 (8), (9), a manufacturer, importer, distributor, or agent thereof, may serve or donate liquor without charge to delegates and guests at a bona fide convention of a trade association composed of licensees of the board, subject to conditions set forth in this regulation.

(1) For the purposes of this section a "convention" is defined as a bona fide session or assembly of the general membership of a trade association composed of licensees of the board.

(2) Such manufacturer, importer, distributor, or agent thereof, must hold a special permit issued by the board to engage in such an activity at such convention. The fee for each such special permit shall be \$25.00. A permit is required for each booth or room a manufacturer, importer, distributor, or agent thereof is serving or donating liquor. Application for such permit shall be submitted on a form prescribed by the board. The statutory permits applicable to such activities are:

(a) A special permit provided for in RCW 66.20.010(8) which authorizes the holder thereof to serve liquor without charge to delegates and guests in a hospitality room or from a booth in a board-approved suppliers' display room at such convention.

(b) A special permit provided for in RCW 66.20.010(9) which authorizes the holder thereof to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at such convention.

(3) Any liquor served or donated as provided herein is authorized only for consumption within a specific area designated on an application for permit and approved by the board.

(4) A special permit holder who serves or donates any beer or wine on which state taxes have not been paid, must file a report of the quantity so served or donated and remit the amount of the taxes to the board, in conformity with RCW 66.20.010 (8), (9).

(5) Any spirituous liquor served or donated shall be purchased from ((the board or a spirit, beer and wine restaurant licensee)) a licensed spirits retailer.

(6) Any licensee promoting a trade show event shall submit a list of all suppliers attending the event.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-110 Advertising by retail licensees.

(1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the name as it appears on the license issued to the licensee:

(a) Words such as tavern, cafe, grocery, market, wine shop, and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees, shall neither be required nor prohibited as part of the trade name in advertisements.

(b) Advertisements by a spirit, beer and wine restaurant licensee may also refer to cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room.

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," "buy one—get one free," or "two for \$_____."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court((or

((d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade)).

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

AMENDATORY SECTION (Amending WSR 09-14-035, filed 6/24/09, effective 7/25/09)

WAC 314-64-08001 Procedures for providing spirit samples to authorized retail licensees for the purpose of negotiating a sale. A distiller, craft distiller, spirits distributor, spirits certificate of approval holder, spirits importer, or their agent may, for the purpose of product promotion, provide without charge single samples to retail licensees authorized to sell spirits and their employees.

(1) Samples are limited to 750 ml and no more than one sample of each product may be provided to any one licensed business.

(2) ~~((All spirit samples must be purchased at retail from the board from existing stocks or by special order.)~~

~~((3)))~~ Only products not purchased by the retail licensee within the last twelve months from the distiller or their agent or existing products with a change in alcohol proof or formula may be sampled. If there is a complete change of ownership of the retail licensee to another entity, the former retail licensee's purchase of the product is not deemed a purchase made by the successor retail licensee for purposes of this provision.

~~((4)))~~ ~~(3)~~ Both the retailer and distiller, craft distiller, spirits certificate of approval holder, spirits distributor, and spirits importer must retain records of sampling for a period of ~~((two))~~ three years. The records shall include the brand and type of sample and the date of sampling.

~~((5)))~~ ~~(4)~~ If the distiller, craft distiller, spirits certificate of approval holder, spirits distributor, and spirits importer keeps records within an automated data processing (ADP) system, the system must include a method for producing legible records that will provide the required information. The ADP system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices) underlying the summary account data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

~~((6)))~~ ~~(5)~~ The provisions contained in subsection (4) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 314-64-010 Purpose.

WAC 314-64-020 Definitions.

WAC 314-64-040

Procedures for board samples.

WAC 314-64-050

Accounting for board samples.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 314-76-015

What is the purpose of this chapter?

WAC 314-76-020

Who may special order liquor from the board?

WAC 314-76-025

What liquor products may be special ordered?

WAC 314-76-030

Are there special requirements for a special order?

WAC 314-76-035

How does an individual place a special order?

WSR 12-11-016

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed May 4, 2012, 2:30 p.m.]

The Washington department of fish and wildlife is withdrawing WAC 232-12-063 and 232-12-257 filed as part of WSR 12-04-098 on February 1, 2012. We do not need to change these rules for this year's hunting season.

Lori Preuss
Rules Coordinator

WSR 12-11-019

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 7, 2012, 11:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-045.

Title of Rule and Other Identifying Information: Chapter 392-127 WAC, Finance—Certificated instructional staff ratio (46:1000) compliance.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on June 26, 2012, at 10:00 a.m.

Date of Intended Adoption: June 26, 2012.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction (OSPI), P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by June 22, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by June 22, 2012, TTY (360) 664-3631 or (360) 725-6270.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule revisions update the calculation of the state-required K-12 certificated instructional staff ratio (46:1000) compliance, pursuant to ESHB 2065, section 10 (2011 legislative session).

Statutory Authority for Adoption: RCW 28A.150.100 and 28A.150.290(1).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Ross Bunda, OSPI, (360) 725-6308; Implementation: JoLynn Berge, OSPI, (360) 725-6301; and Enforcement: Shawn Lewis, OSPI, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

May 3, 2012
Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending WSR 08-21-052, filed 10/9/08, effective 11/9/08)

WAC 392-127-015 FTE enrollment—Definition. As used in this chapter, "full-time equivalent enrollment" means for the period selected by a school district, the total full-time equivalent students reported by a school district pursuant to WAC 392-121-122 excluding:

(1) Running start and University of Washington transition school students reported under WAC 392-121-122 (3) and (4); and

(2) Students that are being served pursuant to a contract under WAC 392-121-188 with a higher education institution when the staff serving the students are not reported on the school district's S-275 report for the time of instruction.

(3) Students enrolled in alternative learning experience programs reported under RCW 28A.150.325.

AMENDATORY SECTION (Amending WSR 08-04-027, filed 1/29/08, effective 2/29/08)

WAC 392-127-070 Basic education certificated instructional staff ratio—Definition. As used in this chapter, "basic education certificated instructional staff ratio" means the following calculation:

(1) Add the full-time equivalent basic education certificated instructional employees, as determined in WAC 392-127-045, as reported on the S-275 and any supplemental full-time equivalent staff reported to the superintendent of public instruction, excluding staff assigned to alternative learning experience programs under RCW 28A.150.325;

(2) Divide the result obtained in subsection (1) of this section by the full-time equivalent enrollment for October or that period selected by the school district; and

(3) Multiply the result obtained in subsection (2) of this section by one thousand.

AMENDATORY SECTION (Amending WSR 10-13-048, filed 6/9/10, effective 7/10/10)

WAC 392-127-090 School district reporting—Optional report—Enrollment changes. A school district may request that the superintendent of public instruction use a different full-time equivalent enrollment to compute staffing ratios than that reported for October. The school district shall request the use of a different enrollment period prior to completion of audit of data by the state auditor. The school district may select(±

~~(1) Through the 2010-11 school year, the full-time equivalent enrollment for any one month during the current school year.~~

~~(2) For the 2011-12 school year and thereafter,))~~ the full-time equivalent enrollment for any one month during the current school year when all basic education instructional programs are operating.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-127-011	Other ratio requirements.
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WSR 12-11-020

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 07-17—Filed May 7, 2012, 1:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-22-116.

Title of Rule and Other Identifying Information: Chapter 173-518 WAC, Water resources management program for the Dungeness portion of the Elwha-Dungeness Water Resource Inventory Area (WRIA 18).

Hearing Location(s): Guy Cole Center, Carrie Blake Park, 202 North Blake Avenue, Sequim, WA, on June 28, 2012, at 5:00 p.m. - Open house; 6:00 p.m. - Presentation with questions and answers followed by public hearing.

Date of Intended Adoption: August 31, 2012.

Submit Written Comments to: Ann Wessel, Department of Ecology, Bellingham Field Office, 1440 10th Street, Suite 102, Bellingham, WA 98225-7028, e-mail awes461@ecy.wa.gov, fax (360) 715-5225, by 5:00 p.m., July 9, 2010 [2012].

Assistance for Persons with Disabilities: Contact Judy Beitel by June 20, 2012, TTY 711 or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To better manage water resources in the Dungeness watershed, the local water-

shed planning unit recommended that ecology adopt, in rule, a water resource management strategy for the watershed, including protection of instream flows and mitigation requirements for new water uses. The watershed plan recommendations were approved by the Clallam County Board of Commissioners on June 7, 2005. The key rule elements include:

- Setting instream flow levels in the watershed to protect aquatic resources, including habitat for threatened salmonids;
- Closing surface waters to new withdrawals with the exception of seasonal water from the Dungeness River;
- Requiring mitigation for all new consumptive uses of water, including permit-exempt withdrawals;
- Establishing reserves of water for future domestic use;
- Setting maximum allocations of water from the mainstem Dungeness during the open period;
- Allowing storage projects; and
- Requiring measuring of new water uses.

Reasons Supporting Proposal: RCW 90.82.130(4) states when a watershed plan is approved by a watershed planning unit and the county legislative authority, ecology is obligated to use the plan for making future water resource decisions for the watershed. The proposal also furthers the state of Washington's water management goals and ecology's statutory obligations.

Statutory Authority for Adoption: Chapters 90.03, 90.22, 90.42, 90.44, 90.54, and 90.82 RCW.

Statute Being Implemented: Chapters 90.03, 90.22, 90.42, 90.44, 90.54, and 90.82 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Wessel, Department of Ecology Bellingham Field Office, 1440 10th Street, Suite 102, Bellingham, WA 98225-7028, (360) 715-5215; **Implementation and Enforcement:** Mike Gallagher, Department of Ecology Southwest Regional Office, 300 Desmond Drive, Lacey, WA 98503, (360) 407-6058.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Executive Summary: Based on research and analysis required by the Regulatory Fairness Act - RCW 19.85.070 - the department of ecology (ecology) has determined the proposed rule [amendment] to the Dungeness watershed rule (chapter 173-518 WAC) is not likely to have a disproportionate impact on existing small businesses. Therefore, ecology was not required to include small-business cost-minimizing features in the rule where it is legal and feasible to do so.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment-the way water would be regulated and used in the absence of the proposed rule.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal, state, and local levels, and how they would be applied in context.

The proposed rule does not impact existing water users who continue using water for the same purposes in the same amounts. This is true of adjudicated water rights, or water rights based on claims, permits, certificates, and the groundwater permit exemption.¹ Only new uses of water would be required by the rule to meter and to mitigate for the impact of the consumptive use of water. Therefore, the proposed rule cannot have disproportionate impacts on existing small businesses, unless they choose to expand their use of water and not seek water service from a public water system or municipal supplier with adequate capacity.

In the future, however, as the population of the area affected by the proposed rule grows (as is estimated in the cost-benefit analysis, Ecology publication # 12-11-020), new population will likely require new goods and services, as well as new jobs in the area. It is those not-yet-existing businesses (home-based goods and services, domestic water use in independent commercial establishments, small production industry) that may incur compliance costs under the proposed rule, and those costs may be disproportionately large for small businesses.

In the appendices, ecology has illustrative discussion of the prospective compliance costs to:

- A single business that does not yet exist, but might locate in the Dungeness in the future.
- A Dungeness economy that would grow twice as large as it currently is (and is otherwise identical).

Section 1: Introduction and Background

Based on research and analysis required by the Regulatory Fairness Act - RCW 19.85.070 - ecology has determined the proposed rule to the Dungeness watershed rule (chapter 173-518 WAC) is not likely to have a disproportionate impact on existing small businesses. Therefore, ecology was not required to include small-business cost-minimizing features in the rule where it is legal and feasible to do so.

This document is intended to be read with the associated cost-benefit analysis (Ecology publication # 12-11-020), which contains more in-depth discussion of the analyses, as well as references and appendices.

A small business is defined as having fifty or fewer employees. Estimated impacts are determined as compared to the existing regulatory environment-the way water would be regulated and used in the absence of the proposed rule.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal, state, and local levels, and how they would be applied in context.

Section 2: Description of the Proposed Rule

The proposed rule:

- Sets instream flow levels for the Dungeness mainstream, tributaries, and independent drainages.

- Closes subbasins to new surface water withdrawals for at least part (if not all) of the year.
- Requires mitigation of all new groundwater uses, and provides for a water exchange to facilitate mitigation. This includes permitted and permit-exempt uses.
- Requires metering of all new withdrawals. This includes permitted and permit-exempt uses.
- Establishes reservations ("reserves") under RCW 90.54.050(1) for domestic (indoor) use.
- Establishes maximum depletion amounts to limit temporary adverse impacts for nondomestic water use under an approved mitigation plan, and set a limit on total impacts from all new water uses to closed surface waters.
- Establishes maximum allocation amounts for interruptible purposes from high flows from the Dungeness mainstem.
- Includes a provision allowing storage projects for environmental enhancement.

Section 3: No Disproportionate Impacts on Existing Businesses

The proposed rule does not impact existing water users who continue using water for the same purposes in the same amounts. This is true of adjudicated water rights, or water rights based on claims, permits, certificates, and the groundwater permit exemption.² Only new uses of water would be required by the rule to meter and to mitigate for the impact of the consumptive use of water. Therefore, the proposed rule cannot have disproportionate impacts on existing small businesses, unless they choose to expand their use of water and not seek water service from a public water system or municipal supplier with adequate capacity.

In the future, however, as the population of the area affected by the proposed rule grows (as is estimated in the cost-benefit analysis, Ecology publication # 12-11-020), new population will likely require new goods and services, as well as new jobs in the area. It is those not-yet-existing businesses (home-based goods and services, domestic water use in independent commercial establishments, small production industry) that may incur compliance costs under the proposed rule, and those costs may be disproportionately large for small businesses.

While ecology determined that the proposed rule will not likely have disproportionate impacts on existing businesses (and, therefore, cannot discuss compliance costs, mitigation of disproportionate impacts, or jobs impacts in this document), ecology felt the public would benefit from a discussion in addition to the required small business economic impact statement (SBEIS) determinations, addressing not-yet-existing businesses that might locate in the Dungeness watershed in the future.

In the appendices, ecology has illustrative discussion of the prospective compliance costs to:

- A single business that does not yet exist, but might locate in the Dungeness in the future.
- A Dungeness economy that would grow twice as large as it currently is (and is otherwise identical).

Again, these appended examples are not compliance impacts of the proposed rule on existing businesses in an industry; they illustrate how the proposed rule would impact hypothetical businesses in the future. This illustration is not possible for all proposed rules, but is possible for the proposed Dungeness rule.

Appendix A: A Hypothetical Business

For illustrative purposes, ecology looked at the impacts of the proposed rule on a hypothetical business locating in the Dungeness watershed in the future. Existing businesses would not be affected by the proposed rule, and ecology was not required to include elements in the proposed rule to reduce impacts to small businesses.

In broad terms, a future business might incur compliance costs under the proposed rule, up to:

- Metering costs of \$500.
- Mitigation costs for new permit-exempt water use, of \$1,500 - \$16,500 per acre-foot (AF), or \$1.68 - \$18.48 per gallon.³

Metering costs would likely be constant, regardless of water use or business size. In that case, the proposed rule's metering requirement would impose disproportionate costs on small new businesses.⁴

Using a report from the Pacific Institute on prospective water-saving measures for businesses, ecology assumed water use to be linearly related to the number of employees (given an industry). In that case - if water use, cost per unit of water, and number of employees are linearly related - the proposed rule's mitigation requirement would not impose disproportionate costs on small new businesses, by industry. Because different industries would use different amounts of water per employee, however, or have differently sized businesses, the proposed rule's mitigation requirement might have disproportionate impacts across new businesses in different industries.⁵

Overall, looking at a hypothetical business that might locate in the Dungeness in the future, the proposed rule is likely to impose disproportionate impacts on small new businesses (compared to large new businesses). This means that future growth in jobs could be reduced; though job growth would still be positive when a new business moved to the area, it might be smaller job growth than without the proposed rule, if we look at only compliance costs.

Looking beyond compliance costs, in the absence of the proposed rule, litigation could result in reduced development in the watershed. This would be a large reduction in future jobs as well - impacting small and large businesses alike, and perhaps not allowing a new business to locate in the Dungeness at all - and the proposed rule would help to avoid those job and development losses.

Appendix B: A Hypothetical Economy

For illustrative purposes ecology has estimated the impacts of the proposed rule on prospective businesses entering a hypothetical affected market in the future. This is intended to illustrate how compliance costs would be distributed in a Dungeness economy that would grow twice as large

as it currently is, but was otherwise identical in the types of businesses located there. Existing businesses would not be affected by the proposed rule, and ecology was not required to include elements in the proposed rule to reduce impacts to small businesses.

A business locating in the Dungeness could incur compliance costs under the proposed rule, up to:

- Metering costs of \$500.
- Mitigation costs for new permit-exempt water use, of \$1,500 - \$16,500 per acre-foot (AF), or \$1.68 - \$18.48 per gallon.⁶

Ecology assumed the following water uses based on business type by standard industrial classification (SIC) code, and limited to those industry categories that exist in the Dungeness watershed, and which might be impacted by the proposed rule if new businesses locate in the affected area.⁷

Table 1: Water Use per Employee by Industry
(gpd/employee)

Category	SIC Code	Water use (gpd/employee)
construction and contractors	15 and 87	250
food and kindred products	20	1,967
textile mill products	22	1,530
apparel and other textile products	23	37
lumber and wood products	24	2,144
furniture and fixtures	25	53
paper and allied products	26	1,000
printing and publishing	27	98
rubber and misc. plastics products	30	120
leather and leather products	31	32
stone, clay, glass, and concrete products	32	1,304
fabricated metal products	34	738
industrial machinery and equipment	35	110
electrical and electronic equipment	36	284
transportation equipment	37	228
instruments and related products	38	142
misc. manufacturing industries	39	86
water transportation	44	994
electric, gas, and sanitary services	49	52
wholesale trade—nondurable goods	51	390

Category	SIC Code	Water use (gpd/employee)
furniture, home furnishings	57	129
hotels, rooming houses, camps	70	302
personal services	72	1,091
business services	73	162
miscellaneous repair services	75	256
health services	80	155
educational services	82	237
social services	83	341
misc. services	89	178

For various size categories of prospective new business (1-4 employees; 5-9 employees; 10-19 employees; etc.), ecology then calculated the typical water use by multiplying the minimum number of employees for each SIC (converted to NAICS) by the typical per-employee water use.⁸ Ecology determined which industries (by 4-digit NAICS) had employers in eastern Clallam County, in the area affected by the proposed rule, using Washington state employment security department data.

For each NAICS-to-business-size combination that would likely have to comply with the proposed rule, and was in the area regulated by the proposed rule, ecology calculated per-employee costs of compliance based on the fixed and per-gpd costs discussed at the beginning of this section. These costs would be paid in the first year only. Costs each year after that would be identical per-employee costs within each industry.

Table 2: Average Present Value Cost per Employee by Affected Hypothetical Employer Size

Employees	Low Cost	High Cost
1 to 4	\$1,290	\$9,191
5 to 9	\$469	\$4,158
10 to 19	\$343	\$3,272
20 to 49	\$299	\$3,036
50 to 99	\$18	\$102
100 to 249	\$517	\$709

It is clear from Table 2 that the proposed rule would have disproportionate impacts on small businesses that could prospectively locate in the affected area, as compared to large businesses that could locate there. Small business costs per employee could range from \$300 to \$9,000, while the largest is likely to have a per-employee compliance cost of \$18 to \$1,000.

The largest ten percent of businesses (across all industries) that could likely be impacted would overlap with the set of small businesses, and using the required comparison of the largest ten percent of businesses to small businesses, the respective comparison of cost ranges is \$18 - \$4,158 and \$299 - \$9,191. While these ranges overlap, it is still possible that small businesses would pay more per employee to com-

ply with the proposed rule than large businesses would. This would only be true in the first year, when constant metering costs are incurred. Again, existing businesses are not likely to be impacted by the proposed rule, but this illustrative example of an economy doubling over time indicates that new small businesses could experience disproportionate costs.

In this example to illustrate the disproportionate impacts of first-year compliance costs, ecology expects the following industries to be required to comply with the proposed rule.

Table 3: NAICS Codes of Industries Likely to be Impacted by the Proposed Rule in Future

1133	2371	3132	3231	3342	3363	5629	6215	8121
1151	2372	3149	3273	3345	3371	6111	6221	8122
2213	3112	3212	3279	3352	5413	6113	6244	8123
2361	3117	3219	3322	3361	5419	6115	7212	
2362	3121	3221	3339	3362	5622	6214	8111	

To complete this example of possible impacts to businesses that do not currently exist, ecology used the Washington state office of financial management's input-output model to estimate the impact of the proposed rule's compliance costs on jobs across the state.⁹

In this illustrative example, ecology estimated jobs impacts if the economy of the Dungeness doubled from its current state under the proposed rule. Ecology estimated the proposed rule could result in the loss of 64 - 96 new jobs over twenty years.¹⁰ A doubling economy, however, would still otherwise create five thousand to fifteen thousand local jobs¹¹ in industries that might be impacted by the proposed rule if new businesses use new permit-exempt water. If there was no growth in businesses and their permit-exempt water use, there would also be no job losses. Similarly, ecology does not expect existing businesses to be impacted by the proposed rule, based on their existing water use and behavior (see Section 3).

Looking beyond compliance costs, in the absence of the proposed rule, litigation could result in reduced development in the watershed. This would be a large reduction in future jobs as well - impacting small and large businesses alike, and perhaps not allowing new businesses to locate in the Dungeness at all - and the proposed rule would help to avoid these job and development losses.

References

Washington State Department of Ecology (2012). Preliminary Cost-Benefit and Least Burdensome Alternative Analyses for Chapter 173-518 Water Resources Management Program for the Dungeness Portion of the Elwha-Dungeness Water Resources Inventory Area (WRIA) 18. May 2012. Ecology publication no. 12-11-020.

Gleick, P, D Haasz, C Henges-Jeck, V Srinivasan, G Wolff, K Cushing, and A Mann (2003). Waste Not, Want Not: The Potential for Urban Water Conservation in California. For the Pacific Institute for Studies in Development, Environment, and Security, November 2003.

Washington State Employment Security Department (2012). Workforce Explorer industry information for likely

affected industries, <https://fortress.wa.gov/esd/employment-data/>.

¹For in-depth discussion of permit-exempt water use, please see the associated cost-benefit analysis (Ecology publication #12-11-020).

²For in-depth discussion of permit-exempt water use, please see the associated cost-benefit analysis (Ecology publication #12-11-020).

³See the cost-benefit analysis for sources of these costs.

⁴Simply, a constant \$500 cost divided by a small number of employees means a larger cost per employee at small businesses.

⁵Additionally, water use mitigation is based on CONSUMPTIVE use, which would also vary across industries.

⁶See the cost-benefit analysis for sources of these costs.

⁷Most values based on estimates from Gleick, et al. (2003) for urban water use.

⁸In this way - by using the MINIMUM number of employees in each category - ecology ensured the MAXIMUM number of businesses would fall under the 5,000 gpd usage allowed for domestic and industrial under a permit-exempt groundwater right.

⁹Normally, ecology would treat payments for water mitigation from one sector to another as a transfer (with negative impacts on one industry, and positive impacts on the other industry), but ecology could not confidently determine between which industries these transfers would flow, and so calculated jobs impacts based only on treating those payments for mitigation and compliance as losses to the state economy. This means the negative jobs impacts likely overestimate the actual impact on jobs. In reality, as these payments are transfers, net job losses will likely be smaller, and jobs across all industries may actually increase. The jobs impacts presented here are highly conservative overestimates of cost impact.

¹⁰This value is across the entire state economy; not just in the Dungeness. This value is across all industries in the state. Ecology could not determine how many of these jobs would be in the Dungeness watershed.

¹¹This value is in the Dungeness watershed affected by the proposed rule.

A copy of the statement may be obtained by contacting ecology web page at <http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness.html> or Water Resources Program Publications, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6872, fax (360) 407-7162, e-mail WRPublications@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting ecology web page at <http://www.ecy.wa.gov/programs/wr/instream-flows/dungeness.html> or Water Resources Program Publications, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6872, fax (360) 407-7162, e-mail WRPublications@ecy.wa.gov.

May 7, 2012

Polly Zehm
Deputy Director

Chapter 173-518 WAC

WATER RESOURCES MANAGEMENT PROGRAM FOR THE DUNGENESS PORTION OF THE ELWHA-DUNGENESS WATER RESOURCE INVENTORY AREA (WRIA) 18

NEW SECTION

WAC 173-518-010 General provisions. (1) This chapter applies to all surface and groundwaters within the Dungeness River watershed of water resource inventory area

(WRIA) 18, as defined in WAC 173-500-040, excluding the Elwha-Morse watershed basin. The rule covers the area from the Morse-Bagley watershed divide in the western portion of the basin, to the Bell-Johnson watershed divide on the eastern portion of the basin (the WRIA boundary). Please see WAC 173-518-140, Maps.

(2) The department of ecology (ecology) adopts this chapter under the authority of the Watershed planning (chapter 90.82 RCW), Water Resources Act of 1971 (chapter 90.54 RCW), Water code (chapter 90.03 RCW), Regulation of public groundwaters (chapter 90.44 RCW), Minimum Water Flows and Levels Act (chapter 90.22 RCW), and Water resource management (chapter 90.42 RCW); and in accordance with the Administrative Procedure Act (chapter 34.05 RCW).

(3) This chapter applies to the use and appropriation of surface and groundwater in the Dungeness River watershed begun after the effective date of this chapter. Unless otherwise provided for in the conditions of the water right in question, this chapter shall not affect:

- Existing surface and groundwater rights established prior to adoption of the state surface water and groundwater codes, or by water right permit issued under state law;
- Existing groundwater rights established under the groundwater permit-exemption where regular beneficial use began before the effective date of this chapter;
- The ability to serve water to a parcel that is part of a group domestic use under the groundwater permit exemption, provided the new use begins within five years of the date water was first regularly and beneficially used by one or more parcels in the group, and the group use remains within the limit of the groundwater permit exemption; and
- Federal and tribal reserved rights.

(4) In adopting this chapter, ecology generally enacts recommendations from the 2005 Elwha-Dungeness watershed management plan. The plan recommendations were approved on April 15, 2004, by the Dungeness River and Elwha-Morse management teams, groups composed of a broad range of local water interests. The Clallam County board of commissioners approved the plan on June 7, 2005. Ecology has used plan recommendations as the foundation for developing this rule.

NEW SECTION

WAC 173-518-020 Purpose. The purpose of this chapter is to manage water to better satisfy both present and future human needs; to retain natural surface water bodies in the Dungeness River watershed planning area with stream flows at levels necessary to protect instream values and resources; and to implement ecology's obligations under the Elwha Dungeness watershed plan. Instream resources include: Wildlife, fish, scenic, aesthetic, recreation, water quality, and other environmental values; navigational values; and stock water needs.

NEW SECTION

WAC 173-518-030 Definitions. The definitions provided in this section apply only to this chapter.

"Allocation" means the designation of specific amounts of water for beneficial uses.

"Appropriation" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, consistent with the ground and surface water codes and other applicable water resource statutes.

"Beneficial use" means uses of water as defined in chapters 90.03 and 90.54 RCW and WAC 173-500-050.

"Closure" means that water is no longer available for future appropriations without mitigation to offset the use. This is due to a finding by ecology that further appropriations from the closed stream(s) or hydraulically connected groundwaters would impair senior water rights or cause detriment to the public interest.

"Consumptive use" means use of water that diminishes the volume or quality of the water source.

"Control station" means a specific location where stream flows and water levels are measured.

"Critical period" means for a given stream the thirty-day period with the lowest stream flow available to support a critical life stage for fish, as determined by Washington state department of fish and wildlife, ecology, and tribes, typically during the late summer or fall.

"Cubic foot per second" or "cfs" means the rate of flow representing a volume of one cubic foot passing a given point during one second.

"Domestic use" means use of water associated with human health and welfare needs, including water used for drinking, bathing, sanitary purposes, cooking, laundering, and other incidental household uses. Domestic use does not include outdoor irrigation such as lawn or garden watering.

"Dungeness water exchange" means a water bank pursuant to the Water Resources Management Act, chapter 90.42 RCW.

"Ecology" means the Washington state department of ecology.

"Existing water right" includes perfected riparian rights, federal Indian and non-Indian reserved rights, or other perfected and inchoate appropriative rights, including water rights established under RCW 90.03.260 through 90.03.290 and 90.44.050.

"Hydraulically connected" means saturated conditions exist that allow water to move between two or more sources of water, either between surface water and groundwater or between groundwater sources.

"Instream flows" means a stream flow level set in rule to protect and preserve fish, wildlife, scenic, aesthetic, recreational, water quality, and other environmental values; and navigational values. The term "instream flow" means "base flow" under chapter 90.54 RCW, "minimum flow" under chapters 90.03 and 90.22 RCW, and "minimum instream flow" under chapter 90.82 RCW.

"Interruption" means a temporary halt or reduction in the rate and volume of withdrawal under water rights issued after the effective date of this rule during periods when the flow in the river or stream falls below the instream flow levels set in WAC 173-518-040.

"Maximum depletion amount" means a limit on how much impact to water resources resulting from groundwater

withdrawals will be allowable under this rule before ecology declares water is not available.

"Mitigation" means action taken to offset impacts from future water appropriations on closed surface water bodies or senior water rights, including the instream flow levels set in WAC 173-518-040, as provided in WAC 173-518-070.

"Nonconsumptive use" means a type of water use where either there is no diversion from a water source, or where there is no diminishment of the amount or quality of the water source.

"Permit-exempt withdrawals" or **"permit exemption"** means a groundwater withdrawal exempted from ecology water right permitting requirements under RCW 90.44.050, but which is otherwise subject to the groundwater code and other applicable regulations.

"Proponent" means the person or entity that seeks a new appropriation of surface or groundwater, including through a permit exempt withdrawal.

"Public water system" means any system that provides water for human consumption or municipal purposes through pipes or other constructed conveyances. This includes systems classified by Washington department of health to be either Group A or B, and excludes a system serving one single-family residence or a system with four or fewer connections serving residences on the same farm.

"Reservation" means a limited allocation of water for future new uses not subject to interruption when stream flows fall below the levels adopted in this rule.

"Stream flow" means the amount of water flowing down a stream.

"Subbasin management unit" means a stream segment, reach, or tributary basin where a particular instream flow level, reservation, water diversion, or withdrawal limit applies.

"Timely and reasonable" means the timing and cost involved in providing potable water service by a public water system to a property consistent with Washington department of health guidance and local coordinated water system plan definitions.

"Water budget neutral" means either placement of other water rights into the trust water right program or stream flow improvement with appropriate assurances, that are at least equivalent to the amount of consumptive use of a proposed project.

"Water resource inventory area (WRIA)" means one of the sixty-two areas designated by the state of Washington through chapter 173-500 WAC to delineate area boundaries within the state for water management purposes.

"Water right change or transfer" means a change in the place of use, point of diversion or withdrawal, number of points of diversion or withdrawal, or purpose of use (including season of use), of an existing water right. A water right change application must be filed with ecology for approval. If approved, the modified water right will carry the priority date of the original water right.

"Water right permit" means a permit that represents approval by ecology to appropriate water for a beneficial use.

"Withdrawal" means the extraction and beneficial use of groundwater, or the diversion and beneficial use of surface water.

NEW SECTION

WAC 173-518-040 Establishment of instream flows.

(1) The instream flows established in this section are based on recommendations in the 2005 Elwha-Dungeness watershed plan, consultation with the Jamestown S'Klallam Tribe, the departments of fish and wildlife, agriculture, and commerce; and public input received during the rule-making process.

(2) Instream flows established in this rule are necessary to meet the water resource management objectives of the Elwha-Dungeness Watershed Plan.

(3) Instream flows established in this rule are water rights and will be protected from impairment by any new water rights commenced after the effective date of this chapter and by future water right changes and transfers.

(4) Instream flows are expressed in cubic feet per second (cfs), and are measured at the control stations identified in Table I. Tables II A and B identify instream flows set by this rule.

(5) Exceptions to the instream flow requirements are provided in WAC 173-518-070, 173-518-080, and 173-518-085. Any other new water uses established after the effective date of this rule will be subject to interruption when stream flows drop below the instream flow levels set in Table II.

Table I
Subbasin Management Unit Information

Subbasin Management Point Name	Control Station by River Mile (RM); Latitude (Lat.), Longitude (Long.)	Stream Management Reach
Bagley Creek @ Hwy. 101	RM 1.4; 48°05'56"N, 123°19'47"W	From mouth to headwaters, including tributaries.
Bell Creek @ Schmuck Rd.	RM 0.2; 48°05'01"N, 123°03'25"W	From mouth to headwaters, including tributaries.
Cassalery Creek @ Woodcock Rd.	RM 1.8; 48°06'59"N, 123°06'31"W	From mouth to headwaters, including tributaries.
Dungeness River @ Schoolhouse Bridge	Ecology Gage 18A050 RM 0.8; 48°08'37"N, 123°07'43"W	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.
Gierin Creek @ Holland Rd.	RM 1.7; 48°06'05"N, 123°04'40"W	From mouth to headwaters, including tributaries.
Matriotti Creek @ Lamar Ln.	RM 1.3; 48°07'54"N, 123°09'46"W	From mouth to headwaters, including tributaries.
McDonald Creek @ Old Olympic Hwy.	RM 1.6; 48°06'20"N, 123°13'17"W	From mouth to headwaters, including tributaries.
Meadowbrook Creek @ Sequim-Dungeness Way	RM 1.2; 48°08'41"N, 123°07'27"W	From mouth to headwaters, including tributaries.
Siebert Creek @ Old Olympic Hwy.	Ecology Gage 18L060 RM 1.3; 48°06'24"N, 123°16'42"W	From mouth to headwaters, including tributaries.

Table II A
Instream Flows in the Dungeness River Basin
(cubic feet per second)

Month	Bagley Creek	Bell Creek	Cassalery Creek	Dungeness Mainstem	Gierin Creek
January	15	11	5	575	10
February	10	7	3	575	7
March	29	22	12	575	20
April	29	22	12	475	20
May	20	14	8	475	13
June	20	14	8	475	13
July	6	4	2	475	4
August	6	4	2	180	4
September	6	4	2	180	4
October	6	4	2	180	4
November	15	11	5	575	10
December	15	11	5	575	10

Table II B
Instream Flows in the Dungeness River Basin
(cubic feet per second)

Month	Matriotti Creek	McDonald Creek	Meadowbrook Creek	Siebert Creek
January	14	36	12	36
February	10	24	8	24
March	27	63	24	63
April	27	63	24	63
May	18	42	16	42
June	18	42	16	42
July	5	15	5	15
August	5	15	5	15
September	5	15	5	15
October	5	15	5	15
November	14	36	12	36
December	14	36	12	36

NEW SECTION

WAC 173-518-050 Closures. Surface water: Ecology determines that, based on historical and current low stream flows and the need to protect existing water rights, no water is reliably available for new consumptive uses from the streams and tributaries in the Dungeness River watershed listed in Table III, with the exception of certain times of year in the Dungeness mainstem. Therefore, Bagley, Bell, Cassalery, Gierin, Matriotti, McDonald, Meadowbrook, and Siebert creeks are closed year round. The Dungeness River mainstem is closed from July 15 until November 15 each year. Table III shows the closure periods and affected reaches. Exceptions to the surface water closures are provided in WAC 173-518-070, 173-518-080, and 173-518-085.

Table III
Surface Water Closures

Stream Management Unit Name	Affected Reach	Timing
Cassalery Creek	From mouth to headwaters, including tributaries.	All year
Dungeness Mainstem	From mouth to headwaters, including tributaries, except Meadowbrook and Matriotti creeks.	From July 15 - November 15
Gierin Creek	From mouth to headwaters, including tributaries.	All year
Matriotti Creek	From mouth to headwaters, including tributaries.	All year
McDonald Creek	From mouth to headwaters, including tributaries.	All year
Meadowbrook Creek	From mouth to headwaters, including tributaries.	All year
Siebert Creek	From mouth to headwaters, including tributaries.	All year

Stream Management Unit Name	Affected Reach	Timing
Bagley Creek	From mouth to headwaters, including tributaries.	All year
Bell Creek	From mouth to headwaters, including tributaries.	All year

NEW SECTION

WAC 173-518-060 Metering and reporting water use. All future new surface and groundwater appropriations, other than rainwater collection, shall measure withdrawals.
(1) Water meters must meet ecology's specifications.

(2) Water meters must be read and reported in accordance with chapter 173-173 WAC or as directed by ecology.

NEW SECTION

WAC 173-518-070 Future groundwater appropriations. All new groundwater appropriations must comply with the provisions of this chapter.

(1) Based on the hydrogeology of the basin, ecology determines that surface water and groundwater sources within the Dungeness watershed are hydraulically connected.

(2) If connection to a public water supply is not available in a timely and reasonable manner, then a new withdrawal from another well is allowed. Written evidence that connection is not available must be provided to ecology or the county before another well may be used for a new withdrawal.

- A new permit-exempt withdrawal may receive water from an existing group domestic water system operating under the groundwater permit exemption. The new withdrawal will be considered an additional and separate exemption.

(3) New groundwater rights, including permit-exempt withdrawals under RCW 90.44.050, may be obtained that are not subject to the instream flows established in WAC 173-518-040 or to the closures established in WAC 173-518-050 if all statutory requirements are met and any of the following situations apply:

- (a) A proposed use that would impact any surface water sources listed in Table III is mitigated through an ecology-approved mitigation plan, as defined in WAC 173-518-075.

- (i) Water use may be mitigated through the purchase of credits available through the Dungeness water exchange. The exchange will identify methods and means of mitigation, including the use of water resources management techniques and water banking authorized under RCW 90.03.255 and chapter 90.42 RCW. The 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009) will be the basis for determining credits for offsetting the consumptive use associated with the proposed water use. At the time of rule adoption the 2008 Dungeness Groundwater Flow Model represents the best available method for calculating mitigation credits. If ecology determines a better method is available in the future, then ecology will apply the new method. Drilling to the middle or deep aquifer, where available, is encouraged.

- (ii) As an alternative to acquiring mitigation through the Dungeness water exchange, the proponent may choose to submit a mitigation plan. Ecology must approve the mitigation plan prior to plan implementation. If ecology determines that the mitigation is no longer effective, the water use shall cease until an effective mitigation plan is put in place.

- (b) The proposed use is nonconsumptive, and is compatible with the intent of this chapter.

- (c) The proponent shows, through scientifically sound studies and technical analysis, and to the satisfaction of ecology, that the proposed use will not adversely affect any surface waters closed in WAC 173-518-050.

- (4) All new wells drilled must comply with state well drilling requirements in chapter 173-160 WAC, in particular

the provisions to prevent contamination between aquifers in WAC 173-160-241.

(5) New permits for groundwater withdrawals may include a provision requiring that the permittee allow ecology employees access to the well and any associated measuring device upon request at reasonable times.

NEW SECTION

WAC 173-518-075 Mitigation plans. The Dungeness water exchange and new water users choosing to mitigate must submit a mitigation plan to ecology to demonstrate how they will offset the impacts of their proposed consumptive use (see WAC 173-518-070 (3)(a)). The mitigation plan must receive ecology approval and be implemented before the proposed water use begins.

- (1) The mitigation plan must:

- (a) Ensure mitigation measures remain effective as long as the water use occurs.

- (b) Include affirmative measures to prevent water provided for mitigation under the plan from being appropriated for any other purpose or by another person or entity.

- (c) Include a monitoring and reporting plan, with a quality assurance/quality control plan.

- (2) The mitigation plan must show that the proposed withdrawal with mitigation in place will not:

- (a) Impair existing water rights;

- (b) Be detrimental to the public interest, including consideration of projected domestic use in the area, the projected stream depletions within affected subbasins, the likelihood that mitigation to offset such projected stream depletions can be obtained or achieved, water budget neutrality with respect to the Dungeness River watershed, and maximizing instream benefits during the critical period; or

- (c) Result in a net loss of water from a closed source greater than the applicable maximum depletion amounts.

- (3) The plan must include financial assurance for implementing the plan. Ecology may, for any reason, refuse any performance security ecology does not deem adequate. Financial assurances may include:

- (a) A bank letter of credit;

- (b) A cash deposit;

- (c) A negotiable security;

- (d) An assignment of a savings account;

- (e) A savings certificate in a Washington bank;

- (f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW; or

- (g) Other financial assurance deemed adequate by ecology.

NEW SECTION

WAC 173-518-076 Expedited processing. Ecology may expedite the processing of an application for a change or transfer of an existing water right, a water budget neutral determination, or issuance of a water right permit if the application or request is expected to:

- (1) Fully offset impacts to surface water;

- (2) Benefit stream flows; or

(3) Otherwise substantially enhance or protect the quality of the natural environment.

NEW SECTION

WAC 173-518-080 Reserves of water for domestic use. (1) Ecology has weighed the public interest supported by providing a limited amount of water for domestic water supply against the potential for negative impact to instream resources. Ecology finds that the public interest advanced by these limited reserves clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).)

Based on this finding, ecology hereby reserves specific quantities of groundwater for future domestic supply only. These reserves of water are not subject to the instream flows established in WAC 173-518-040 or closures established in WAC 173-518-050.

Consumptive water use that would impact surface water sources listed in Table III must be mitigated in accordance with this chapter. Reserves shall be debited when mitigation water is not available. Table IV shows the reserve quantities for each subbasin management unit.

**Table IV
Reserved Quantities**

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bagley Creek	0.01	6,463
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

(2) Conditions for use of the groundwater reserves are as follows:

(a) Access to the reserves shall be only for the purpose of domestic water use as defined under WAC 173-518-030.

(b) Water use shall meet all applicable local or state conservation standards and be consistent with the watershed plan.

(3) If a use from a reserve does not comply with all conditions of the reserves, ecology may take action under WAC 173-518-110.

(4) Ecology shall maintain a record of all appropriations from the reserves and will make this information available on ecology's web page.

(5) Ecology will account for water use from the reserves by debiting the calculated impacts to each closed surface water. The impacts to surface water are calculated as a percentage of the consumptive portion of estimated or measured water use. The debits to the reserves will be determined after consideration of any implemented mitigation.

(a) For a new domestic use served by an individual or community on-site septic system, ecology will use a standard consumptive amount of fifteen gallons per day.

(b) For a new domestic use served by a sanitary sewer, ecology will use a standard consumptive amount of one hundred fifty gallons per day.

(c) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

(d) Ecology may periodically adjust the amounts deducted from the reserves based on the best information available on actual water use.

NEW SECTION

WAC 173-518-085 Maximum depletion amounts. (1) All unmitigated impacts from the consumptive use of water from the reserves and impacts from implementation of ecology approved mitigation plans shall be debited against the maximum depletion amount for each affected subbasin.

(2) The maximum depletion amounts shall not be exceeded.

(3) No new use that would result in impacts to closed surface waters exceeding the maximum depletion amounts during the critical period shall be allowed. If the cumulative impact calculated for a subbasin exceeds the maximum depletion amount, additional mitigation must be achieved before new uses impacting that subbasin can be authorized.

(4) Ecology shall maintain a record of all appropriations that result in deductions against the maximum depletion amounts. Ecology will account for water use from the maximum depletion amounts by debiting the calculated impact to each closed surface water. The impacts to surface water are calculated as a percentage of the consumptive portion of estimated or measured water use. The deductions from the maximum depletion amounts will be determined after consideration of any implemented mitigation.

(a) For parcels served by an individual or community septic system, ten percent of indoor water use is assumed consumptive.

(b) For parcels served by a sanitary sewer system, one hundred percent of indoor water use is assumed consumptive.

(c) Ninety percent of outdoor water use is assumed to be consumptive.

(d) Impacts to the closed surface waters listed in Table III will be calculated using the 2008 Dungeness Groundwater Flow Model (Pacific Groundwater Group, 2009), unless, in the future, ecology determines a better method is available.

(e) The amounts deducted against the maximum depletion amounts may be adjusted periodically by ecology, to reflect actual use based on the best information available.

(5) Maximum depletion amounts are associated with, and not in addition to, the reservation amounts listed in WAC 173-518-070. Table V shows the maximum depletion amounts for each subbasin management unit.

**Table V
Maximum Depletion Amounts Due to New Groundwater Appropriation**

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bagley Creek	0.01	6,463

Subbasin Management Unit	Cubic Feet Per Second	Gallons Per Day
Bell Creek	0.0023	1,486
Cassalery Creek	0.0013	840
Dungeness River and Matriotti Creek	0.76	491,201
Gierin Creek	0.0109	7,045
McDonald Creek	0.003	1,939
Meadowbrook Creek	0.026	16,804
Siebert Creek	0.022	14,219

NEW SECTION

WAC 173-518-090 Future maximum allocation from the Dungeness River mainstem. (1)(a) Ecology determines that there are certain times of the year when there are stream flows in the Dungeness River mainstem above the instream flows, which provide critical ecological functions such as channel and riparian zone maintenance, sediment flushing, and fish migration. To protect the frequency and duration of these higher flows, this chapter limits the total amount of water available for withdrawal from the Dungeness River mainstem by setting maximum allocations from November 16 - July 14.

(b) Maximum allocations are established in Table VI for use in reviewing applications for interruptible water rights during times when stream flows exceed the instream flows for the Dungeness River mainstem from November 16 - July 14. Cumulative allocations must not exceed the numbers listed in Table VI, and must not impair instream flows.

Table VI
Maximum Allocations on the Dungeness River Mainstem (cubic feet per second)

January	25
February	25
March	25
April	25
May	35
June	35
July 1 - 14	35
July 15 - 31	0
August	0
September	0
October	0
November 1 - 15	0
November 16 - 30	25
December	25

(2) Ecology may issue a permit under RCW 90.03.290, 90.44.050, or 90.03.370 within the maximum allocation limit after consultation with the department of fish and wildlife and the Jamestown S'Klallam Tribe.

The water rights from the maximum allocation are subject to the instream flows set in WAC 173-518-040, and other provisions in statute, administrative rules, and case law.

(3) Ecology will track the amount of water appropriated from the Dungeness River from the maximum allocation. When the maximum allocation is fifty percent, seventy-five percent, and fully appropriated, ecology shall notify Clallam

County in writing. Once fully and permanently appropriated, no more maximum allocation water may be appropriated.

NEW SECTION

WAC 173-518-095 Storage projects. (1) Notwithstanding other provisions of this chapter, ecology, after consultation with Tribes, Clallam County, Washington department of fish and wildlife, and NOAA fisheries may, on a case-by-case basis, authorize storage projects for environmental enhancement and other beneficial uses consistent with the Elwha-Dungeness Watershed Plan. Such decisions shall consider the following:

- The management objectives of the storage project;
- The effect of the project on salmonids;
- The effect of the project on ecological functions provided by high stream flows;
- The cumulative effects of all such projects weighed against the public benefit the stored water would provide.

(2) The application for the storage project must include a monitoring and adaptive management component and show the ability to implement such a program. All other applicable permits must be obtained.

NEW SECTION

WAC 173-518-100 Lakes and ponds. RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced; and lakes, ponds, and other small bodies of water shall be retained substantially in their natural condition. Future withdrawals must be consistent with this requirement.

NEW SECTION

WAC 173-518-110 Compliance and enforcement. (1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, ecology shall prepare and make available to the public technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When ecology determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water rights or to the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, ecology shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess civil penalties under RCW 90.03.600.

(3) Nothing in this section prevents ecology from taking immediate action to stop a violation if in the opinion of ecology the nature of the violation is causing harm to other water rights or to public or tribal resources.

NEW SECTION

WAC 173-518-120 Regulation review. (1) Ecology, after consultation with local, tribal, and state governments, may initiate a review, and if necessary amend this rule under chapter 34.05 RCW, if significant new information becomes available.

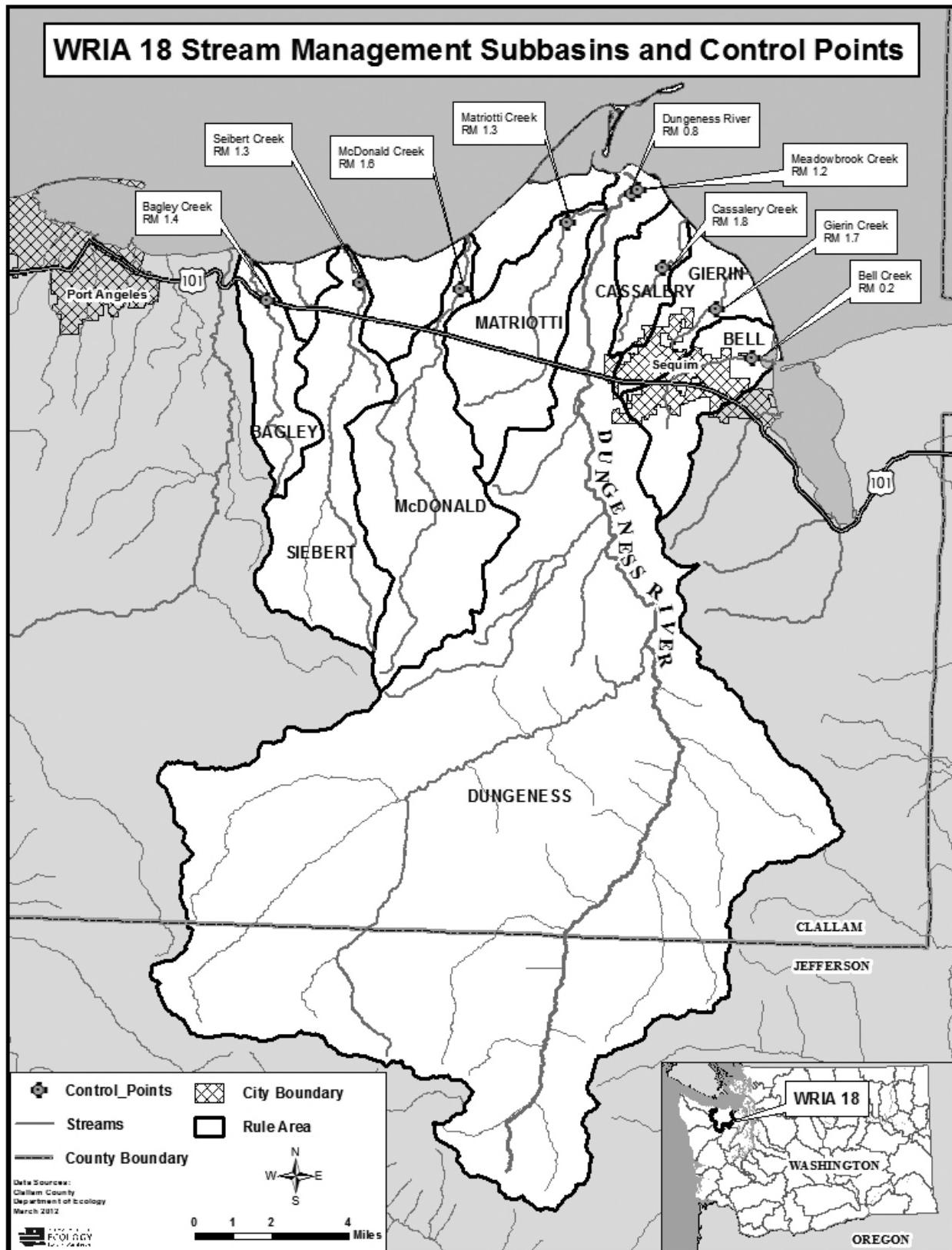
(2) If flow in the Dungeness River, calculated at river mile 4.2, attains an average daily flow of 105 cfs during the thirty-day critical period for eight out of ten consecutive years, then ecology will assess whether new instream flow or other technical studies are warranted for the Dungeness River.

NEW SECTION

WAC 173-518-130 Appeals. All final written decisions of ecology pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this chapter are subject to appeal to the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-518-140 Maps.



WSR 12-11-026
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed May 8, 2012, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-050.

Title of Rule and Other Identifying Information: Chapter 392-143 WAC, Transportation—Specifications for school buses.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 South Washington Street, Olympia, WA 98504-7200, on July 5, 2012, at 10:00 a.m.

Date of Intended Adoption: July 5, 2012.

Submit Written Comments to: Allan J. Jones, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by July 3, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by July 3, 2012, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to chapter 392-143 WAC will provide clarification to school districts on the process to license a school bus. Currently a school district is required to submit a copy of the school bus operation permit (issued by OSPI) to the county auditor or license agent to obtain an exempt plate. This change would eliminate that requirement and result in a reduction in the paperwork collected by the county auditor or license agent.

In addition, the changes proposed will include clarification to the process for obtaining a school bus operations permit.

Statutory Authority for Adoption: RCW 46.61.380.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Allan J. Jones, OSPI, (360) 725-6122; and Enforcement: JoLynn Berge, OSPI, (360) 725-6301.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328.

May 8, 2012
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-032 School bus operation permit. The superintendent of public instruction shall issue school bus operation permits as follows:

(1) School buses owned or operated by a school district or owned by a private contractor under contract to a school district shall be issued a school bus operation permit on

receipt of the following electronic files or documents for each new school bus or used school bus not previously issued a school bus operation permit in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report; and

(b) SPI Form 1029, Initial School Bus Inspection.

(2) A school bus operation permit shall be reissued on receipt of the following electronic files or documents for school buses previously licensed in Washington state:

(a) SPI Form 1020A, School Bus Acquisition Report, from the school district acquiring the school bus; and

(b) SPI Form 1029, Initial School Bus Inspection, if the most recent school bus inspection was more than twelve months prior to the date of acquisition.

(3) A copy of the operation permit shall be retained by the school district and a copy shall be placed in the permit holder in the school bus.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-143-030

School buses—School bus operating permit and license.

WSR 12-11-030

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed May 9, 2012, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-05-040.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-030 and 181-79A-251, defining professional growth plans and professional growth teams. Provides for renewal through the submission of professional growth plans, even for educators who are not employed in the capacity of their certification. Continues to allow continuing education credits for renewal.

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on July 30, 2012, at 8:30 a.m.

Date of Intended Adoption: July 30, 2012.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 16, 2012.

Assistance for Persons with Disabilities: Contact David Brenna by July 16, 2012, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, educators with certificates renew their licenses with continuing education credits. Professional growth plans may now be submitted instead of credits. Credit hours are rewarded for completion of professional growth plans in chapter 181-85 WAC.

Reasons Supporting Proposal: Stakeholder support.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

May 9, 2012

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees

shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) ((Teacher)) "Professional growth team" for the purpose of renewal of the professional certificate, means a team comprised of the ((candidate for professional certification, a colleague specified by the candidate, a provider of support to the candidate, if the candidate chooses to employ a support provider, and a representative from the school district or state approved private, state agency providing education for children in which the candidate teaches or has taught)) individual renewing the certificate and three colleagues, who hold a current educator certificate, chosen by the individual.

(15) "((Individual)) Professional growth plan"

(a) Teacher individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-79A-207.

(b) Principal/program administrator individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences

needed to meet the standards set forth in WAC 181-78A-540(1).

(c) ESA individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards set forth in WAC 181-78A-540(2).

(16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students' increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

AMENDATORY SECTION (Amending WSR 12-07-076, filed 3/20/12, effective 4/20/12)

WAC 181-79A-251 Residency and professional certification. Renewal and reinstatement.

(1) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

(A) Candidates who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(B) Candidates who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or may permit their certificate to lapse until such time they register for the professional certificate assessment;

(C) Candidates whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment;

(D) Individuals who complete a National Board Certification assessment but do not earn National Board Certifica-

tion, may use that completed assessment to renew the residency certificate for two years.

(ii) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, provided: When the first two-year renewal on residency certificates expires, teachers have two renewal options:

(A) Teachers who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(B) Teachers who were unemployed or employed less than full-time during the first two-year renewal may permit their certificate to lapse and receive a second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment.

(C) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years in lieu of submitting an affidavit to the certification office confirming that they will register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(iii) Teachers who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the professional certification assessment within two years.

(iv) Teachers that hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(b) Principals/program administrators.

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who do not qualify for enrollment in a professional certificate program under WAC 181-78A-535 (2)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(c) School counselors and school psychologists.

(i) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, a residency certificate who do not qualify for admission to a professional certificate program under WAC 181-78A-535 (3)(a) may have their residency certificates renewed for one additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate. Renewal for an additional five-year period requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) completed since the issuance of the most recent residency certificate plus an internship approved by a college or university with a professional educator standards board-approved residency certificate program and taken since the issuance of the last residency certificate.

(2) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030 until September 1, ((2012)) 2014. Beginning September 1, ((2012)) 2014, only ((the)) four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 ((is)) are required for renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate ((may use that completed plan to waive)) shall receive the equivalent of thirty hours of continuing education ((requirements for their professional teaching certificate)) credit hours. Until September 1, ((2012)) 2014, an expired professional certificate may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

((I) Is consistent with a school-based plan for mastery of student learning goals as referenced in WAC 329-121-262, the annual school performance report, for the school in which the individual is assigned;

((II) Pertains to the individual's current assignment or expected assignment for the subsequent school year;

((III) Is necessary to obtain an endorsement as prescribed by the professional educator standards board;

((IV) Is specifically required to obtain advanced levels of certification; or

((V) Is included in a college or university degree program that pertains to the individual's current assignment, or potential future assignment, as a certified instructional staff.)

((ii) Individuals not employed as a teacher in a public school or state board of education-approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540; or

(B) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(C) Four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

((iii) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a principal, assistant principal or program administrator in a public school or state board of education-approved private school by:

(A) Completion of a professional growth plan ((that is developed and approved with the superintendent, superintendent designee, or appointed representative)) in collaboration with a minimum of three certificated colleagues (e.g., member of administrative team, educational service district ((personnel)) consultants or administrators, professional association or organization staff, or peer from another district), ((and)) that documents formalized learning opportunities and professional development activities that((:

((I) Emphasize continuous learning;

((II) Positively impact student learning;

((III))) relate to the six standards and "career level" benchmarks defined in WAC ((181-78A-270 (2)(b));

((IV) Explicitly connect to the evaluation process;

(V) Reflect contributions to the school, district, and greater professional community; and

(VI) Identify areas in which knowledge and skills need to be enhanced)) 181-78A-540(1).

(B) Documented evidence of results of the professional growth plan on student learning.

(ii) Individuals not employed as a principal, assistant principal, or program administrator in a public school or state board of education-approved private school may have their professional certificate renewed for ((one additional)) a five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC ((181-78A-270 (2)(b))) 181-78A-540(1) from a regionally accredited institution of higher education taken since the issuance of the professional certificate. ((Renewal beyond one time requires the completion of fifteen quarter credits (ten semester credits) directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) plus an internship approved by a college or university with a professional educator standards board-approved professional certificate program, and taken since the issuance of the last professional certificate.))

(c) School counselors((,)) and school psychologists((, or school social workers)).

(i) A professional certificate may be renewed for additional five-year periods for individuals employed as a school counselor((,)) or school psychologist((, or school social worker)) in a public school, state board of education-approved private school, or in a state agency which provides educational services to students by:

(A) Completion of a professional growth plan that is developed ((and approved with the principal or principal designee)) in collaboration with a minimum of three certificated colleagues or supervisor, and that documents formalized learning opportunities and professional development activities that((,))

(I) Emphasize continuous learning;

(II) Positively impact student learning; and

(III) Reflect contributions to the school, district, and greater professional community)) relate to the standards and career level benchmarks defined in WAC 181-78A-540(2); or

(B) For certificates issued prior to September 1, 2012, completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9).

(ii) Individuals not employed as a school counselor((,)) or school psychologist((, or a school social worker)) in a public school or state board of education-approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC ((181-78A-270 (5), (7), or (9))) 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC ((181-78A-270 (5), (7), or (9))) 181-78A-540(2); or

(C) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(d) For educators holding multiple certificates in subsection (a), (b), or (c) of this section, one professional growth plan shall meet the renewal requirements in this section.

**WSR 12-11-031
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed May 9, 2012, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 08-11-077.

Title of Rule and Other Identifying Information: Amends WAC 181-85-075 providing for the professional growth plan submission to receive continuing education credit. Repeals WAC 181-85-034, the program for awarding clock hours for professional growth plans at the district level.

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on July 30, 2012, at 8:30 a.m.

Date of Intended Adoption: July 30, 2012.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 23, 2012.

Assistance for Persons with Disabilities: Contact David Brenna by July 23, 2012, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Awards credit for completion of a professional growth plan. Repeals rules for district programs that provide clock hours for professional growth plans.

Reasons Supporting Proposal: Stakeholder support.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore

does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

May 9, 2012
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans. Each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours. The completion of one annual professional growth plan shall meet the renewal requirements for all valid continuing and/or professional certificates held by the educator.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-85-034

Continuing education credit hour—Definition—Professional development system—Professional growth plan.

WSR 12-11-042
PROPOSED RULES
EVERETT COMMUNITY COLLEGE

[Filed May 10, 2012, 4:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-014.

Title of Rule and Other Identifying Information:
Tobacco use policy.

Hearing Location(s): Everett Community College, Olympus Hall 205, Olympus Board Room, 2000 Tower Street, Everett, WA 98201, on July 17, 2012, at 5:00 p.m.

Date of Intended Adoption: July 17, 2012.

Submit Written Comments to: Jennifer Howard, Vice-President of Administrative Services, c/o Everett Community College, 2000 Tower Street, Everett, WA 98201, e-mail jhoward@everettcc.edu, fax (425) 388-9228, by July 17, 2012.

Assistance for Persons with Disabilities: Contact Kathy Cook, director of disability services, by July 17, 2012, TTY (425) 388-9438 or (425) 388-9273.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will create an entirely tobacco free environment at Everett Community College. The impact of this rule will be improved air quality, improved campus cleanliness, and improved health for those who currently smoke but choose to quit. Smokers will experience inconvenience in having to go off campus to use tobacco products. Additional consequences will be issued for student and employee violators beyond what is allowed in the current policy, including fines and other discipline as per the relevant handbook or union collective bargaining agreement.

Reasons Supporting Proposal: As described above, this rule will provide a safer, healthier working and learning environment for all students, employees and patrons of Everett Community College.

Statutory Authority for Adoption: RCW 28B.50.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Everett Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Jennifer Howard, Everett Community College, 2000 Tower Street, Everett, WA 98201, (425) 388-9232; Implementation and Enforcement: Patrick Sisneros, Everett Community College, 2000 Tower Street, Everett, WA 98201, (425) 388-9026.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no economic impacts to small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Howard, Vice-President of Administrative Services, 2000 Tower Street, Everett, WA 98201, phone (425) 388-9232, fax (425) 388-9228, e-mail jhoward@everettcc.edu.

May 7, 2012

Jennifer L. Howard
Vice-President of
Administrative Services

AMENDATORY SECTION (Amending WSR 00-17-015, filed 8/3/00, effective 9/3/00)

WAC 132E-120-410 Tobacco use policy. The college's board of trustees has adopted the following tobacco use policy:

((1) Use of tobacco in any form shall not be allowed in college buildings, enclosures or state-owned vehicles and will not be sold or distributed on campus grounds.

(2) The president shall sponsor and/or assist in the establishment of tobacco cessation programs.

(3) Students who willfully violate this policy will be subject to disciplinary procedures.

(4) The success of this policy depends upon the thoughtfulness, consideration, and cooperation of both smokers and nonsmokers. All college community members and visitors share in the responsibility for adhering to and enforcing the policy. Any problems should be brought to the attention of a college administrator, program supervisor, or campus security and handled through the normal chain of authority.

(5) The college has designated specific areas outside on college grounds as smoking areas. These are the only areas on campus where smoking is permitted.) Everett Community College acknowledges and supports the findings of the Surgeon General that tobacco use in any form, active and passive, is a significant health hazard. The college further recognizes that environmental tobacco smoke has been classified as a Class A carcinogen.

In accordance with the Washington Clean Indoor Air Act of 1985 (chapter 70.160 RCW) and in recognition of the executive order establishing governor's policy on smoking in state facilities, and in support of a safe and healthy learning and working environment, smoking or other tobacco usage is not permitted within the perimeter of Everett Community College property, including usage in any vehicle parked on college property.

To achieve the goal of a healthy, tobacco-free environment, the following are also prohibited:

(1) The use of other tobacco products, such as smokeless or chewing tobacco.

(2) The use of electronic cigarettes.

(3) The sale of tobacco products or tobacco related merchandise.

(4) The free distribution (sampling) of tobacco products and associated products.

(5) Sponsorship of campus events by organizations that promote tobacco use.

(6) Advertisement of tobacco products at campus events regardless of sponsorship.

Tobacco cessation aids including, but not limited, to nicotine patches and nicotine gum are permissible.

Smoking may be permitted in a theatrical production when it is required in the script. In these circumstances, there must be an appropriate safe method of extinguishing any resultant fire readily available. Audiences must be notified that there will be smoking on stage.

Violations of the above policy may result in a fine and/or disciplinary action.

Definitions

"College property" includes all college sidewalks, parking lots, landscaped areas, recreational areas and buildings on Everett Community College property; the interior of all buildings located on the college property; and in any and all vehicles owned or operated by Everett Community College regardless of location.

"Improper disposal" includes, but is not limited to, spitting smokeless tobacco product, littering (i.e., discarded cigarette butts, throwing cigarette butts out of windows), leaving spit container, or anything that creates fire hazards.

"Smoking" includes the inhaling, exhaling, burning, or carrying of any lighted smoking material, including cigarettes, cigars, or pipes.

WSR 12-11-066

WITHDRAWAL OF PROPOSED RULES

SOUTH PUGET SOUND COMMUNITY COLLEGE

(By the Code Reviser's Office)

[Filed May 15, 2012, 12:18 p.m.]

WAC 132X-30-010, 132X-30-020, 132X-30-030, 132X-30-040, 132X-30-050, 132X-30-060 and 132X-30-070, proposed by the South Puget Sound Community College in WSR 11-22-009 appearing in issue 11-22 of the State Register, which was distributed on November 16, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-11-067

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF AGRICULTURE

(By the Code Reviser's Office)

[Filed May 15, 2012, 12:18 p.m.]

WAC 16-662-115 and 16-662-125, proposed by the department of agriculture in WSR 11-22-098 appearing in issue 11-22 of the State Register, which was distributed on November 16, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-11-068

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed May 15, 2012, 12:19 p.m.]

WAC 388-315-1000, 388-315-1050, 388-315-1100, 388-315-1150, 388-315-2000, 388-315-2050, 388-315-2100, 388-315-2150, 388-315-2200, 388-315-2250, 388-315-2300, 388-315-2350, 388-315-2400, 388-315-3000, 388-315-3050, 388-315-3100, 388-315-3150, 388-315-3200 and 388-315-

3250, proposed by the department of social and health services in WSR 11-22-100 appearing in issue 11-22 of the State Register, which was distributed on November 16, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-11-076
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed May 16, 2012, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-07-074.

Title of Rule and Other Identifying Information: WAC 182-531-2000 Increased payments for physician-related services for qualified trauma cases and 182-550-5450 Supplemental distributions to approved trauma service centers.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf> or directions can be obtained by calling (360) 725-1000), on June 26, 2012, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 27, 2012.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on June 26, 2012.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 18, 2012, TTY/TDD (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On July 1, 2012, a substantial number (100,000+) of fee-for-service (FFS) clients will be shifted to managed care. HCA currently makes supplemental payments to trauma care providers for FFS clients who meet specified criteria, but trauma care services provided to managed care clients are not eligible for such payments. The proposed rules/amendments will allow HCA to make supplemental payments to trauma care providers for clients in managed care. HCA will also apply for a federal waiver to pay hospitals the supplemental payments outside the capitation rate. These steps will help prevent the loss of up to \$7.5M per year in federal matching funds from the statewide trauma care system. The proposed rules also include housekeeping changes (e.g., replacing "DSHS" with "HCA").

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ayuni Wimpee, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

May 16, 2012
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-531-2000 Increased payments for physician-related services for qualified trauma cases. (1) The ((department of social and health services' (DSHS))) health care authority's physician trauma care fund (TCF) is an amount that is legislatively appropriated to ((DSHS)) the medicaid agency each biennium for the purpose of increasing the ((department's)) agency's payment to physicians and other clinicians (those who are performing services within their licensed and credentialed scope of practice) providing qualified trauma care services to medical assistance clients covered under the ((department's fee-for-service)) agency's medical assistance programs.

(2) Trauma care services provided to clients in:

(a) ((Fee-for-service clients in medicaid, general assistance unemployable (GAU), Alcohol and Drug Addiction Treatment and Support Act (ADATSA))) Medicaid, disability lifeline (DL), incapacity-based medical care services (MCS), children's health insurance program (CHIP), and apple health for kids, qualify for enhanced rate payments from the TCF. Trauma care services provided to a ((GAU)) DL or ((ADATSA)) MCS client qualify for enhanced rates only during the client's certification period. See WAC ((388-416-0010)) 182-504-0010;

(b) ((Clients in)) The alien emergency medical (AEM), refugee assistance, and alien medical programs do not qualify for enhanced rate payments from the TCF; and

(c) ((Clients enrolled in the department's)) The agency's managed care programs ((do not)) qualify for enhanced rate payments from the TCF effective with dates of service on and after July 1, 2012.

(3) To receive payments from the TCF, a physician or other clinician must:

(a) Be on the designated trauma services response team of any department of health (DOH)-designated or DOH-recognized trauma service center;

(b) Meet the provider requirements in this section and other applicable ((WAC)) rules;

(c) Meet the billing requirements in this section and other applicable ((WAC)) rules; and

(d) Submit all information the ((department)) agency requires to monitor the trauma program.

(4) Except as described in subsection (5) of this section and subject to the limitations listed, the ((department)) agency makes payments from the TCF to physicians and other clinicians:

(a) For only those trauma services that are designated by the ((department)) agency as "qualified." Qualified trauma care services include:

(i) Follow-up surgical services provided within six months of the date of the injury. These surgical procedures must have been planned during the initial acute episode of injury; and

(ii) Physiatrist services provided during an inpatient stay immediately following, and within six months of, the ((initial episode of)) qualifying traumatic injury.

(b) For hospital-based professional services-only, and for follow-up surgeries performed in a medicare-certified ambulatory surgery center (ASC). The follow-up surgery must have been performed within six months of the initial traumatic injury.

(c) Only for trauma cases that meet the injury severity score (ISS) (a summary rating system for traumatic anatomic injuries) ((or)) criteria specified by the agency. The current qualifying ISS are:

(i) Thirteen or greater for an adult trauma patient (a client age fifteen or older); ((or)) and

(ii) Nine or greater for a pediatric trauma patient (a client younger than age fifteen).

(d) On a per-client basis in any DOH-designated or DOH-recognized trauma service center.

(e) At a rate of two and one-half times the ((department's)) agency's current fee-for-service rate for qualified trauma services, or other payment enhancement percentage the ((department determines as)) agency deems appropriate.

(i) The ((department)) agency monitors the payments from the TCF during each state fiscal year (SFY) and makes necessary adjustments to the rate to ensure that total payments from the TCF for the ((biennium)) SFY will not exceed the legislative appropriation for that ((biennium)) SFY.

(ii) Laboratory and pathology charges are not eligible for payments from the TCF. (See subsection (6)(b) of this section.)

(5) When a trauma case is transferred from one hospital to another, the ((department)) agency makes payments from the TCF to physicians and clinicians, according to the ISS score as follows:

(a) If the transferred case meets or exceeds the appropriate ISS threshold described in subsection (4)(c) of this section, providers who furnish qualified trauma services, whether in ((either)) the transferring or receiving facility, are eligible for payments from the TCF.

(b) If the transferred case is below the ISS threshold described in subsection (4)(c) of this section, only providers who furnish qualified trauma services in the receiving hospital are eligible for payments from the TCF.

(6) The ((department)) agency makes a TCF payment to a physician or clinician:

(a) Only when the provider submits an eligible trauma claim with the appropriate trauma indicator within the time frames specified by the ((department)) agency; and

(b) On a per-claim basis. Each qualifying trauma service and/or procedure on the provider's claim is paid at the ((department's)) agency's current fee-for-service rate, multiplied by the appropriate payment enhancement percentage described in subsection (4)(e) of this section. Laboratory and pathology services and/or procedures are not eligible for payments from the TCF and are paid at the ((department's)) agency's current fee-for-service rate.

(7) For purposes of the payments from the TCF to physicians and other clinicians, all of the following apply:

(a) The ((department)) agency considers a request for a claim adjustment submitted by a provider only if the ((department)) agency receives the adjustment request within three hundred sixty-five days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the ((department)) agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary or other program needs;

(b) Except as provided in subsection (7)(a) of this section, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the ((department)) agency as specified in WAC ((388-502-0150(3))) 182-502-0150(3). See WAC ((388-502-0150)) 182-502-0150 (11) and (12) for other time limits applicable to trauma claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total payments from the TCF disbursed to providers by the ((department)) agency in ((a biennium)) an SFY cannot exceed the amount appropriated by the legislature for that ((biennium)) SFY. The ((department)) agency has the authority to take whatever actions are needed to ensure the ((department)) agency stays within its TCF appropriation (see subsection (4)(e)(i) of this section).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-550-5450 Supplemental distributions to approved trauma service centers. (1) The trauma care fund (TCF) is an amount ((legislatively)) appropriated to the ((department)) medicaid agency each ((biennium)) state fiscal year (SFY), at the legislature's sole discretion, for the purpose of supplementing the ((department's)) agency's payments to eligible trauma service centers for providing qualified trauma services to medicaid ((fee-for-service)) clients. Claims for trauma care provided to medicaid clients enrolled in the ((department's)) agency's managed care programs are ((not)) eligible for supplemental distributions from the TCF effective with dates of service on and after July 1, 2012.

(2) The ((department)) agency makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable ((WAC)) rules;

(c) Meet the billing requirements in this section and other applicable ((WAC)) rules;

(d) Submit all information the ((department)) agency requires to monitor the program; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five payment pools. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing the agency's qualifying payments to each eligible ((hospital's qualifying payments)) hospital since the beginning of the service year and expressing this amount as a percentage of the agency's total payments to all eligible hospitals for qualifying services provided during the service year-to-date. For TCF purposes, service year is defined as the ((state fiscal year)) SFY. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount for the service year-to-date, and then the ((department)) agency subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current payment pool to be paid to each qualifying hospital. ((This method for determining supplemental distributions to hospitals applies to TCF allotments beginning with state fiscal year (SFY) 2008-)) Eligible hospitals and qualifying payments are described in (a)(i) through (iii) of this subsection. Qualifying payments are the agency's payments to:

(i) ((Qualifying payments are the department's payments to)) Level I, Level II, and Level III trauma service centers for qualified medicaid trauma cases since the beginning of the service year. The ((department)) agency determines the countable payment for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The ((department's payments to)) Level I, Level II, and Level III hospitals for trauma cases transferred ((in)) to these facilities since the beginning of the service year. A Level I, Level II, or Level III hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's injury severity score (ISS); and

(iii) ((The department's payments to)) Level II and Level III hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in ((subsection (4))(b) of this ((section)) subsection) transferred by these hospitals since the beginning of the service year to a trauma service center with a higher designation level.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of ((subsection (4))(c) of this subsection).

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level II or Level III adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or ((b))) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level IV or Level V trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in ((subsection (4))(b) of this ((section)) subsection).

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the ((department)) agency to:

(i) Trauma service centers designated or recognized as Level IV or Level V;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level III trauma service center((Beginning with qualifying trauma services provided in SFY 2007, the department allows a hospital with this dual status to receive distributions from the TCF)); or

(iii) Any facility for follow-up services related to the qualifying trauma incident but provided to the client after the client has been discharged from the initial hospitalization for the qualifying injury.

(5) Distributions for an SFY are paid as follows:

(a) The first supplemental distribution from the TCF is made three to six months after the SFY begins;

(b) Subsequent distributions are made approximately every two to four months after the first distribution is made, except as described in ((subsection)) (c) of this subsection;

(c) The final distribution from the TCF for ((the same)) an SFY is:

(i) Made one year after the end of the SFY;

(ii) ((Based on the SFY that the TCF designated amount relates to;)) Limited to the remaining balance of the agency's TCF appropriation for that SFY; and

(iii) Distributed based on each eligible hospital's percentage share of the total payments made by the ((department)) agency to all designated trauma service centers for qualified trauma ((cases)) services provided during the relevant SFY.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The ((department)) agency considers a provider's request for a trauma claim adjustment only if the adjustment request is received by the ((department)) agency within three hundred sixty-five calendar days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the ((department)) agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary program needs;

(b) Except as provided in ((subsection (6)))(a) of this ((section)) subsection, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the ((department)) agency as specified in WAC ((388-502-0150(3))) 182-502-0150(3). See WAC ((388-502-0150)) 182-502-0150 (11) and (12) for other time limits applicable to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the ((department)) agency in any ((biennium)) SFY cannot exceed the amount appropriated by the legislature for that ((biennium)) SFY. The ((department)) agency has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 12-11-079
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed May 17, 2012, 11:35 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Title 246 WAC, adding a new chapter to consolidate four separate adverse health event reporting rules into one section and amending existing rules to reference the new chapter 246-302 WAC.

WAC	Title - Effect of Proposed Rules	Facility
Chapter 246-302 WAC	Adverse health events.	New consolidated chapter
246-320-010	Definitions - delete definition no longer needed.	Hospitals
246-320-131	Governance - reference new chapter.	Hospitals
246-320-146	Adverse health events - clarify requirement, reference new chapter.	Hospitals
246-320-151	Reportable events - reference new chapter.	Hospitals
246-320-171	Improving organizational performance - reference new chapter.	Hospitals
246-322-260	Adverse health events - clarify requirement, reference new chapter.	Private psychiatric hospitals
246-329-045	Applicant or licensee rights and responsibilities - reference new chapter.	Childbirth centers
246-330-010	Definitions - delete definition no longer needed.	Ambulatory surgical facilities
246-330-115	Governance - reference new chapter.	Ambulatory surgical facilities
246-330-130	Adverse health events - clarify requirement, reference new chapter.	Ambulatory surgical facilities

WAC	Title - Effect of Proposed Rules	Facility
246-330-155	Coordinated quality improvement program - reference new chapter.	Ambulatory surgical facilities

Hearing Location(s): Washington State Department of Health, 111 Israel Road S.E., Town Center 2, Room 158, Tumwater, WA 98501, on June 27, 2012, at 1:30 p.m.

Date of Intended Adoption: June 28, 2012.

Submit Written Comments to: Dianna Staley, P.O. Box 47860, Olympia, WA 98504-7860, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by June 27, 2012.

Assistance for Persons with Disabilities: Contact Dianna Staley by June 20, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules update the National Quality Forum 2011 listing of serious reportable events (adverse health events) that medical facilities must report and clarify definitions. The proposed rules consolidate existing reporting requirements for hospitals, psychiatric hospitals, childbirth centers, and ambulatory surgical facilities from four chapters into one new chapter. The proposed rules also amend existing rules to reference new chapter 246-302 WAC.

Reasons Supporting Proposal: The National Quality Forum adopted an updated list of serious reportable events (adverse health events) in December 2011. Chapter 70.56 RCW requires the department to amend agency rules when the list is changed. To ensure consistency, the proposed adverse event reporting rules create a new chapter in Title 246 WAC to consolidate the various existing rules from four chapters and to also amend the other existing rules to reference the new chapter.

Statutory Authority for Adoption: Chapter 70.56 RCW.

Statute Being Implemented: Chapter 70.56 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Dianna Staley, 111 Israel Road S.E., Tumwater, WA 98507, (360) 236-4997; Implementation and Enforcement: Kathy Schmitt, 111 Israel Road S.E., Tumwater, WA 98507, (360) 236-2869.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or

national consensus codes that generally establish industry standards.

May 17, 2012
Mary C. Selecky
Secretary

Chapter 246-302 WAC

ADVERSE HEALTH EVENTS

ADVERSE HEALTH EVENTS REPORTING

NEW SECTION

WAC 246-302-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. Definitions for other terms in this section are described in the National Quality Forum list of serious reportable events.

(1) "Adverse health event" or "adverse event" means the list of twenty-nine serious reportable events updated and adopted by the National Quality Forum in 2011, in its consensus report on serious reportable events in health care. Adverse health events are listed in WAC 246-302-030.

(2) "Ambulatory surgical facility" means a facility licensed under chapter 70.230 RCW.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Department" means the department of health.

(5) "Hospital" means a facility licensed under chapter 70.41 RCW.

(6) "Medical facility" means a licensed ambulatory surgical facility, childbirth center, hospital, or psychiatric hospital.

(7) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

NEW SECTION

WAC 246-302-020 How and when to report. Medical facilities must report confirmed adverse health events to the department. A medical facility must:

(1) Notify the department that an adverse health event has occurred within forty-eight hours of confirmation of the adverse health event. The notification must include:

- (a) The name of the medical facility;
- (b) The date the adverse event was confirmed;
- (c) The type of adverse health event; and

(d) Any additional contextual information the medical facility chooses to provide.

(2) Submit a report to the department within forty-five days of the confirmation of the adverse health event. The report must include a root cause analysis and corrective action plan. The root cause analysis must:

- (a) Follow the procedures and methods of:
 - (i) The joint commission;
 - (ii) The department of veterans affairs national center for patient safety; or
 - (iii) Another nationally recognized root cause analysis methodology the department has found acceptable.

(b) Include the following information:

- (i) The findings regarding the root cause of the adverse health event;
- (ii) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse health event occurred;

(iii) The number of nursing personnel present at the time of the adverse health event who have been supplied by temporary staffing agencies, including traveling nurses; and

(iv) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled number of consecutive hours worked by each such nursing personnel at the time of the adverse health event.

The corrective action plan must be consistent with the findings of the root cause analysis and include:

- (A) How each finding will be addressed and corrected;
- (B) When each correction will be completed;
- (C) Who is responsible to make the corrections;
- (D) What action will be taken to prevent the adverse health event from reoccurring; and

(E) A monitoring schedule to assess the effectiveness of the corrective action plan, including who is responsible for the monitoring schedule.

(3) If a medical facility determines there is no need to create a corrective action plan for a particular adverse health event, the medical facility must provide to the department a written explanation of the reasons for not creating a corrective action plan.

(4) The medical facility may amend the notification or report within sixty days of the submission.

(5) The report shall not include any identifying information for any health care professional, facility employee, or patient involved.

(6) Notification and reporting under this rule does not remove a medical facility's responsibility to report a licensed practitioner's unprofessional conduct to the department, as defined under RCW 18.130.180.

NEW SECTION

WAC 246-302-030 Adverse health events. The National Quality Forum identifies and defines twenty-nine serious reportable events. The twenty-nine adverse health events described in the National Quality Forum 2011 update are listed in WAC 246-302-030.

(1) Surgical or invasive procedure events:

(a) Surgery or other invasive procedure performed on the wrong site.

(b) Surgery or other invasive procedure performed on the wrong patient.

(c) Wrong surgical or other invasive procedure performed on a patient.

(d) Unintended retention of a foreign object in a patient after surgery or other invasive procedure.

(e) Intraoperative or immediately postoperative/postprocedure death in an ASA Class 1 patient.

(2) Product or device events:

(a) Patient death or serious injury associated with the use of contaminated drugs, devices, or biologics provided by the health care setting.

(b) Patient death or serious injury associated with the use or function of a device in patient care, in which the device is used or functions other than as intended.

(c) Patient death or serious injury associated with intravascular air embolism that occurs while being cared for in a health care setting.

(3) Patient protection events:

(a) Discharge or release of a patient/resident of any age, who is unable to make decisions, to other than an authorized person.

(b) Patient death or serious injury associated with patient elopement (disappearance).

(c) Patient suicide, attempted suicide, or self-harm that results in serious injury, while being cared for in a health care setting.

(4) Care management events:

(a) Patient death or serious injury associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration).

(b) Patient death or serious injury associated with unsafe administration of blood products.

(c) Maternal death or serious injury associated with labor or delivery in a low-risk pregnancy while being cared for in a health care setting.

(d) Death or serious injury of a neonate associated with labor or delivery in a low-risk pregnancy.

(e) Patient death or serious injury associated with a fall while being cared for in a health care setting.

(f) Any Stage 3, Stage 4, and unstageable pressure ulcers acquired after admission/presentation to a health care setting.

(g) Artificial insemination with the wrong donor sperm or wrong egg.

(h) Patient death or serious injury resulting from the irretrievable loss of an irreplaceable biological specimen.

(i) Patient death or serious injury resulting from failure to follow up or communicate laboratory, pathology, or radiology test results.

(5) Environmental events:

(a) Patient or staff death or serious injury associated with an electric shock in the course of a patient care process in a health care setting.

(b) Any incident in which systems designated for oxygen or other gas to be delivered to a patient contains no gas, the wrong gas, or is contaminated by toxic substances.

(c) Patient or staff death or serious injury associated with a burn incurred from any source in the course of a patient care process in a health care setting.

(d) Patient death or serious injury associated with the use of physical restraints or bedrails while being cared for in a health care setting.

(6) Radiologic events: The death or serious injury of a patient or staff associated with the introduction of a metallic object into the magnetic resonance imaging (MRI) area.

(7) Potential criminal events:

(a) Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.

(b) Abduction of a patient/resident of any age.

(c) Sexual abuse/assault on a patient or staff member within or on the grounds of a health care setting.

(d) Death or serious injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care setting.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral stress or injury.

(2) ~~((("Adverse health event" or "adverse event" means the list of *Serious Reportable Events* adopted by the National Quality Forum in 2002 (and updates in 2006), in its consensus report on serious reportable events in health care.~~

(3)) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

((4)) (3) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

((5)) (4) "Alteration" means any change, addition, or modification to an existing hospital or a portion of an existing hospital.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities in addition to that for which the hospital is currently licensed.

((6)) (5) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into a health care setting or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

((7)) (6) "Authentication" means the process used to verify an entry is complete, accurate, and final.

((8)) (7) "Bed, bed space or bassinet" means the physical environment and equipment (both movable and stationary) designed and used for twenty-four hour or more care of a patient including level 2 and 3 bassinets. This does not include stretchers, exam tables, operating tables, well baby bassinets, labor bed, and labor-delivery-recovery beds.

((9)) (8) "Child" means an individual under the age of eighteen years.

((10)) (9) "Clinical evidence" means the same as original clinical evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

- (a) X-ray films;
- (b) Digital records;
- (c) Laboratory slides;
- (d) Tissue specimens; and
- (e) Medical photographs.

((11)) (10) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. Care is provided by multidisciplinary teams of highly skilled physicians, nurses, pharmacists or other health professionals who interpret complex therapeutic and diagnostic information and have access to sophisticated equipment.

((12)) (11) "Department" means the Washington state department of health.

((13)) (12) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in *Directory of Dietetic Programs Accredited and Approved, American Dietetic Association*, edition 100, 1980.

((14)) (13) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

((15)) (14) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official *U.S. Pharmacopoeia* or the official *Homeopathic Pharmacopoeia of the United States*;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

((16)) (15) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.

((17)) (16) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

((18)) (17) "Emergency contraception" means any health care treatment approved by the Food and Drug Administration that prevents pregnancy, including, but not limited

to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

((19)) (18) "Emergency department" means the area of a hospital where unscheduled medical or surgical care is provided to patients who need care.

((20)) (19) "Emergency room" means a space where emergency services are delivered and set apart by floor-to-ceiling partitions on all sides with proper access to an exit access and with all openings provided with doors or windows.

((21)) (20) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

((22)) (21) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

((23)) (22) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician assistant to determine the nature and urgency of the person's medical need for treatment.

((24)) (23) "Family" means individuals designated by a patient who need not be relatives.

((25)) (24) "General hospital" means a hospital that provides general acute care services, including emergency services.

((26)) (25) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

((27)) (26) "High-risk infant" means an infant, regardless of age, whose existence is compromised, prenatal, natal, or postnatal factors needing special medical or nursing care.

((28)) (27) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services

would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include:

- (a) Hospice care centers which come within the scope of chapter 70.127 RCW;
- (b) Hotels, or similar places, furnishing only food and lodging, or simply domiciliary care;
- (c) Clinics or physicians' offices, where patients are not regularly kept as bed patients for twenty-four hours or more;
- (d) Nursing homes, as defined in and which come within the scope of chapter 18.51 RCW;
- (e) Birthing centers, which come within the scope of chapter 18.46 RCW;
- (f) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(g) Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions;

(h) Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

((29)) (28) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

- (a) Treatment goals, with stipulated time frames;
- (b) Specific services to be utilized;
- (c) Designation of individuals responsible for specific service to be provided;
- (d) Discharge criteria with estimated time frames; and
- (e) Participation of the patient and the patient's designee as appropriate.

((30)) (29) "Infant" means an individual not more than twelve months old.

((31)) (30) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

((32)) (31) "Licensed practical nurse" means an individual licensed under provisions of chapter 18.79 RCW.

((33)) (32) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

((34)) (33) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

((35)) (34) "Medical staff" means physicians and other practitioners appointed by the governing authority.

((36)) (35) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

((37)) (36) "Multidisciplinary treatment team" means a group of individuals from various disciplines and clinical ser-

vices who assess, plan, implement, and evaluate treatment for patients.

((38)) (37) "Neglect" means mistreatment or maltreatment; a disregard of consequences or magnitude constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts which may result in emotional or behavioral problems, physical manifestations, and disorders.

((39)) (38) "Neonate" means a newly born infant under twenty-eight days of age.

((40)) (39) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

((41)) (40) "New construction" means any of the following:

- (a) New facilities to be licensed as a hospital;
- (b) Renovation; or
- (c) Alteration.

((42)) (41) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

((43)) (42) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

((44)) (43) "Operating room (OR)" means a room intended for invasive and noninvasive surgical procedures.

((45)) (44) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(a) "Inpatient" means services that require admission to a hospital for twenty-four hours or more.

(b) "Outpatient" means services that do not require admission to a hospital for twenty-four hours or more.

((46)) (45) "Patient care areas" means all areas of the hospital where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

((47)) (46) "Patient care unit or area" means a physical space of the hospital including rooms or areas containing beds or bed spaces, with available support ancillary, administrative, and services for patient.

((48)) (47) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

((49)) (48) "Pharmacist" means an individual licensed by the state board of pharmacy chapter 18.64 RCW.

((50)) (49) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

((51)) (50) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW,

Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

((52)) (51) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

((53)) (52) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition.

((54)) (53) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated hospital staff under defined circumstances under hospital policy and procedure.

((55)) (54) "Psychiatric service" means the treatment of patients pertinent to a psychiatric diagnosis.

((56)) (55) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures.

((57)) (56) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

((58)) (57) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

((59)) (58) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

((60)) (59) "Seclusion" means the involuntary confinement of a patient in a room or area where the patient is physically prevented from leaving.

((61)) (60) "Seclusion room" means a secure room designed and organized for temporary placement, care, and observation of one patient with minimal sensory stimuli, maximum security and protection, and visual and auditory observation by authorized personnel and staff. Doors of seclusion rooms have staff-controlled locks.

((62)) (61) "Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or
- (h) An attempt to commit any of the items in (a) through (g) of this subsection.

((63)) (62) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10 point scale with 1 being the least and 10 being the most pain.

((64)) (63) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories:

- (a) Patients with a cardiac condition;
- (b) Patients with an orthopedic condition;
- (c) Patients receiving a surgical procedure; and

(d) Any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

((65)) (64) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

((66)) (65) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue;

(b) Suture or repair of tissue including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination.

((67)) (66) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity as defined in RCW 7.70.065 or has given permission.

((68)) (67) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

((69)) (68) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

((70)) (69) "Unlicensed assistive personnel (UAP)" means individuals trained to function in an assistive role to nurses in the provision of patient care, as delegated by and under the supervision of the registered nurse. Typical activities performed by unlicensed assistive personnel include, but are not limited to: Taking vital signs; bathing, feeding, or dressing patients; assisting patient with transfer, ambulation, or toileting. Definition includes: Nursing assistants; orderlies; patient care technicians/assistants; and graduate nurses (not yet licensed) who have completed unit orientation. Definition excludes: Unit secretaries or clerks; monitor technicians; therapy assistants; student nurses fulfilling educational requirements; and sitters who are not providing typical UAP activities.

((71)) (70) "Victim of sexual assault" means a person is alleged to have been sexually assaulted and who presents as a patient.

((72)) (71) "Vulnerable adult" means, as defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself; an adult with a developmental disability under RCW 71A.10.020; an adult with a legal guardian under chapter 11.88 RCW; an adult living in a long-term care facility (an adult family home, boarding home or nursing home); an adult living in their own or a family's home receiving services from an agency or contracted individual provider; or an adult self-directing their care under RCW 74.39.050. For the purposes

of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. For the purposes of this chapter, it shall also include hospitalized adults.

((73)) (72) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-131 Governance. This section provides organizational guidance and oversight responsibilities of hospital resources and staff to support safe patient care.

For the purposes of this section "practitioner" means pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

The governing authority must:

(1) Establish and review governing authority policies including requirements for:

(a) Reporting practitioners according to RCW 70.41-210;

(b) Informing patients of any unanticipated outcomes according to RCW 70.41.380;

(c) Establishing and approving a performance improvement plan;

(d) Providing organizational management and planning;

(e) Reporting adverse events and conducting root cause analyses according to ((RCW 70.56.020)) chapter 246-302 WAC;

(f) Providing a patient and family grievance process including a time frame for resolving each grievance;

(g) Defining who can give and receive patient care orders that are consistent with professional licensing laws; and

(h) Providing communication and conflict resolution between the medical staff and the governing authority;

(2) Establish a process for selecting and periodically evaluating a chief executive officer or administrator;

(3) Appoint and approve a medical staff;

(4) Require written or electronic orders, authenticated by a legally authorized practitioner, for all drugs, intravenous solutions, blood, medical treatments, and nutrition; and

(5) Approve and periodically review bylaws, rules, and regulations adopted by the medical staff before they become effective.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-146 Adverse health events ((and incident)) reporting ((system)) requirements. ((The purpose of this section is to outline each hospital's responsibilities for reporting and addressing adverse events. In this section, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.))

Hospitals must:

(1) Notify the department whenever any of the following adverse events as defined by the National Quality Forum, Serious Reportable Events in Health Care occur:

1. Surgery performed on the wrong body part;
2. Surgery performed on the wrong patient;
3. Wrong surgical procedure performed on a patient;
4. Unintended retention of a foreign object in a patient after surgery or other procedure;
5. Intraoperative or immediately postoperative death in an ASA Class 1 patient;
6. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility;
7. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended;
8. Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a health care facility;
9. Infant discharged to wrong person;
10. Patient death or serious disability associated with patient elopement (disappearance);
11. Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a health care facility;
12. Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration);
13. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products;
14. Maternal death or serious disability associated with labor or delivery in a low risk pregnancy while being cared for in the health care facility;
15. Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;
16. Death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia neonates;
17. Stage 3 or 4 pressure ulcers acquired after admission to a health care facility;

- ~~18. Patient death or serious disability due to spinal manipulative therapy;~~
- ~~19. Patient death or serious disability associated with electric shock or electric cardioversion while being cared for in a health care facility;~~
- ~~20. Any incident in which a line designed for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;~~
- ~~21. Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility;~~
- ~~22. Patient death or serious disability associated with a fall while being cared for in a health care facility;~~
- ~~23. Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility;~~
- ~~24. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider;~~
- ~~25. Abduction of a patient of any age;~~
- ~~26. Sexual assault on a patient within or on the grounds of a health care facility;~~
- ~~27. Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care facility; and~~
- ~~28. Artificial insemination with the wrong donor sperm or egg;~~

(2) Notify the department within forty-eight hours of confirmation by the hospital when any adverse event has occurred using established procedures. The notice must include:

- (a) The hospital's name;
- (b) The type of event identified in subsection (1) of this section;
- (c) The date the event was confirmed; and
- (d) Any additional contextual information the hospital chooses to provide;
- (e) Conduct a root cause analysis of each adverse event following the procedures and methods of:
 - (a) The joint commission;
 - (b) The department of Veterans Affairs National Center for Patient Safety; or
 - (e) Another nationally recognized root cause analysis methodology found acceptable by the department;
- (f) As part of the root cause analysis, include the following information:
 - (a) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse event occurred;
 - (b) The number of nursing personnel present at the time of the adverse event who have been supplied by temporary staffing agencies, including traveling nurses; and
 - (e) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled

number of hours or shifts at the time of the event and the number of consecutive hours worked by each such nursing personnel at the time of the adverse event;

(5) Create and implement a corrective action plan for each adverse event consistent with the findings of the root cause analysis. Each corrective action plan must include:

- (a) How each finding will be addressed and corrected;
- (b) When each correction will be completed;
- (c) Who is responsible to make the corrections;
- (d) What action will be taken to prevent each finding from reoccurring; and

(e) A monitoring schedule for assessing the effectiveness of the corrective action plan including who is responsible for the monitoring schedule;

(6) If a hospital determines there is no need to create a corrective action plan for a particular adverse event, provide a written explanation of the reasons for not creating a corrective action plan;

(7) Complete and submit a root cause analysis within forty-five days, after confirming an adverse health event has occurred, to the department.) The National Quality Forum identifies and defines twenty-nine serious reportable events (adverse health events) as updated and adopted in 2011.

(1) Hospitals must report adverse health events to the department.

(2) Hospitals must comply with the reporting requirements under chapter 246-302 WAC.

(3) Adverse health events are listed in chapter 246-302 WAC.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-151 Reportable operational or maintenance events. The purpose of this section is to outline each hospital's responsibility for reporting serious events that affect the operation and maintenance of the facility.

(1) Hospitals must notify the department within forty-eight hours whenever any of the following events have occurred:

(a) A failure or facility system malfunction such as the heating, ventilation, fire alarm, fire sprinkler, electrical, electronic information management, or water supply affecting patient diagnosis, treatment, or care within the facility; or

(b) A fire affecting patient diagnosis, treatment, or care within the facility.

(2) Each notice to the department must include:

- (a) The hospital's name;
- (b) The event type from subsection (1) of this section; and
- (c) The date the event occurred.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-171 Improving organizational performance. The purpose of this section is to ensure that performance improvement activities of staff, medical staff, and outside contractors result in continuous improvement of patient health outcomes. In this section "near miss" means an event which had the potential to cause serious injury, death, or

harm but did not happen due to chance, corrective action or timely intervention.

Hospitals must:

(1) Have a hospital-wide approach to process design and performance measurement, assessment, and improving patient care services according to RCW 70.41.200 and include, but not be limited to:

(a) A written performance improvement plan that is periodically evaluated;

(b) Performance improvement activities which are interdisciplinary and include at least one member of the governing authority;

(c) Prioritize performance improvement activities;

(d) Implement and monitor actions taken to improve performance;

(e) Education programs dealing with performance improvement, patient safety, medication errors, injury prevention; and

(f) Review serious or unanticipated patient outcomes in a timely manner;

(2) Systematically collect, measure and assess data on processes and outcomes related to patient care and organization functions;

(3) Collect, measure and assess data including, but not limited to:

(a) Operative, other invasive, and noninvasive procedures that place patients at risk;

(b) Infection rates, pathogen distributions and antimicrobial susceptibility profiles;

(c) Death;

(d) Medication use;

(e) Medication management or administration related to wrong medication, wrong dose, wrong time, near misses and any other medication errors and incidents;

(f) Injuries, falls; restraint use; negative health outcomes and incidents injurious to patients in the hospital;

(g) Adverse events listed in chapter 246-302 WAC ((246-320-146));

(h) Discrepancies or patterns between preoperative and postoperative (including pathologic) diagnosis, including pathologic review of specimens removed during surgical or invasive procedures;

(i) Adverse drug reactions (as defined by the hospital);

(j) Confirmed transfusion reactions;

(k) Patient grievances, needs, expectations, and satisfaction; and

(l) Quality control and risk management activities.

AMENDATORY SECTION (Amending WSR 09-07-051, filed 3/11/09, effective 4/11/09)

WAC 246-322-260 Adverse health events ((and incident)) reporting ((system)) requirements. ((The purpose of this section is to outline each psychiatric hospital's responsibilities for reporting and addressing adverse events. In this section, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

Psychiatric hospitals must:

((1) Notify the department whenever any of the following adverse events as defined by the National Quality Forum, *Serious Reportable Events in Health Care* occur:

1. Surgery performed on the wrong body part.
2. Surgery performed on the wrong patient.
3. Wrong surgical procedure performed on a patient.
4. Unintended retention of a foreign object in a patient after surgery or other procedure.
5. Intraoperative or immediately postoperative death in an ASA Class 1 patient.
6. Patient death or serious disability associated with the use of contaminated drugs, devices, or biologics provided by the health care facility.
7. Patient death or serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended.
8. Patient death or serious disability associated with intravascular air embolism that occurs while being cared for in a health care facility.
9. Infant discharged to wrong person.
10. Patient death or serious disability associated with patient elopement (disappearance).
11. Patient suicide, or attempted suicide resulting in serious disability, while being cared for in a health care facility.
12. Patient death or serious disability associated with a medication error (e.g., errors involving the wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration).
13. Patient death or serious disability associated with a hemolytic reaction due to the administration of ABO/HLA-incompatible blood or blood products.
14. Maternal death or serious disability associated with labor or delivery in a low-risk pregnancy while being cared for in the health care facility.
15. Patient death or serious disability associated with hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility.
16. Patient death or serious disability (kernicterus) associated with failure to identify and treat hyperbilirubinemia-neonates.
17. Stage 3 or 4 pressure ulcers acquired after admission to a health care facility.
18. Patient death or serious disability due to spinal manipulative therapy.
19. Patient death or serious disability associated with electric shock or electric cardioversion while being cared for in a health care facility.
20. Any incident in which a line designed for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances.

- ~~21. Patient death or serious disability associated with a burn incurred from any source while being cared for in a health care facility.~~
- ~~22. Patient death or serious disability associated with a fall while being cared for in a health care facility.~~
- ~~23. Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility.~~
- ~~24. Any instance of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed health care provider.~~
- ~~25. Abduction of a patient of any age.~~
- ~~26. Sexual assault on a patient within or on the grounds of a health care facility.~~
- ~~27. Death or significant injury of a patient or staff member resulting from a physical assault (i.e., battery) that occurs within or on the grounds of a health care facility.~~
- ~~28. Artificial insemination with the wrong donor sperm or egg.~~

~~(2) Notify the department within forty-eight hours of confirmation by the psychiatric hospital when any adverse event has occurred using established procedures. The notice must include:~~

- ~~(a) The psychiatric hospital's name;~~
- ~~(b) The type of event identified in subsection (1) of this section;~~
- ~~(c) The date the event was confirmed; and~~
- ~~(d) Any additional contextual information the hospital chooses to provide.~~

~~(3) Conduct a root cause analysis of each adverse event following the procedures and methods of:~~

- ~~(a) The joint commission;~~
- ~~(b) The department of Veterans Affairs National Center for Patient Safety; or~~
- ~~(e) Another nationally recognized root cause analysis methodology found acceptable by the department;~~

~~(4) As part of the root cause analysis, include the following information:~~

~~(a) The number of patients, registered nurses, licensed practical nurses, and unlicensed assistive personnel present in the relevant patient care unit at the time the reported adverse event occurred;~~

~~(b) The number of nursing personnel present at the time of the adverse event who have been supplied by temporary staffing agencies including traveling nurses; and~~

~~(c) The number of nursing personnel, if any, on the patient care unit working beyond their regularly scheduled number of hours or shifts at the time of the event and the number of consecutive hours worked by each such nursing personnel at the time of the adverse event.~~

~~(5) Create and implement a corrective action plan for each adverse event consistent with the findings of the root cause analysis. Each corrective action plan must include:~~

- ~~(a) How each finding will be addressed and corrected;~~
- ~~(b) When each correction will be completed;~~
- ~~(c) Who is responsible to make the corrections;~~

~~(d) What action will be taken to prevent each finding from reoccurring; and~~

~~(e) A monitoring schedule for assessing the effectiveness of the corrective action plan including who is responsible for the monitoring schedule;~~

~~(f) If a psychiatric hospital determines there is no need to create a corrective action plan for a particular adverse event, provide a written explanation of the reasons for not creating a corrective action plan;~~

~~(7) Complete and submit a root cause analysis report, within forty-five days after confirming an adverse health event has occurred, to the department.) The National Quality Forum identifies and defines twenty-nine serious reportable events (adverse health events) as updated and adopted in 2011.~~

~~(1) Psychiatric hospitals must report adverse health events to the department.~~

~~(2) Psychiatric hospitals must comply with the reporting requirements under chapter 246-302 WAC.~~

~~(3) Adverse health events are listed in chapter 246-02 WAC.~~

AMENDATORY SECTION (Amending WSR 07-07-075, filed 3/16/07, effective 4/16/07)

WAC 246-329-045 Applicant or licensee rights and responsibilities. This section describes the applicant or licensee's responsibilities in the fulfillment of the requirements of this chapter.

(1) An applicant or licensee must:

- (a) Comply with chapter 18.46 RCW and this chapter;
- (b) Establish, implement and periodically review all policies and procedures which address the contents of this chapter;

(c) Display the license issued by the department in an area accessible to the public;

(d) Notify the department in writing:

- (i) Within thirty days of changes of an administrator, owner or the director of clinical services;

(ii) Thirty or more days before ceasing operations;

(e) Cooperate with the department during surveys which may include reviewing licensee and client records and conducting client interviews with client consent;

(f) Respond to a statement of deficiencies by submitting to the department:

(i) A written plan of correction, within ten working days of receipt. The applicant or licensee must complete all corrections within sixty days after the survey exit date, unless otherwise specified by the department; and

(ii) A progress report describing corrections made and ongoing monitoring actions, within ninety days after the survey exit date, unless the department specifies another date.

(2) An applicant or licensee may:

(a) Discuss findings observed during a survey with the surveyor; and

(b) Discuss the statement of deficiencies with the department's manager.

(3) ((As required by chapter 70.56 RCW, the licensed childbirth center shall notify the department if any of the fol-

~~lowing events have been confirmed to have occurred in the birth center:~~

- (a) An infant abduction or discharge to the wrong family;
 - (b) Sexual assault or rape of a patient or staff member while in the birth center;
 - (c) Maternal death or serious disability with labor or delivery in a low-risk pregnancy while being cared for in a health care facility;
 - (d) Patient death or serious disability associated with:
 - (i) The use of contaminated drugs, devices, or biologics provided by the health care facility;
 - (ii) The use or function of a device in which the device is used or functions other than as intended;
 - (iii) Intravascular air embolism that occurs while being cared for in a health care facility;
 - (iv) A medication error (errors involving wrong drug, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation or wrong route of administration);
 - (v) Hypoglycemia, the onset of which occurs while the patient is being cared for in a health care facility;
 - (vi) Failure to identify and treat hyperbilirubinemia in neonates;
 - (vii) An electric shock while being cared for in a health care facility; or
 - (viii) A burn incurred from any source while being cared for in a health care facility;
 - (e) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by toxic substances;
 - (f) Patient suicide, or attempted suicide resulting in serious disability, that occurs while the patient is receiving care in a health care facility;
 - (g) Death or significant injury of a patient or staff member resulting from physical assault that occurs within or on the grounds of a health care facility;
 - (h) Any instance of care ordered by someone impersonating a physician, nurse, pharmacist or other licensed health care provider;
 - (i) Patient death associated with a fall while being cared for in a health care facility;
 - (j) Patient death or serious disability associated with the use of restraints or bedrails while being cared for in a health care facility; and
 - (k) Sexual assault on a patient within or on the grounds of a health care facility.
- (4) The licensed childbirth center must also notify the department if either of the following events have been confirmed to have occurred in the birth center:
- (a) An unanticipated death, stillbirth or major loss of function; or
 - (b) Any catastrophic incident, such as fire or flood, or any incident which may cause interruption or cessation of the delivery of services, or another interruption of services which would affect the health and safety of the client.
- (5) The report required in subsection (3) and (4) of this section must be submitted in writing to the department as required by chapter 70.56 RCW. The birth center is encouraged to confirm these events through a review or assessment by the birth center's quality improvement or risk management process. Each notice to the department must include:

- (a) The licensee's name;
- (b) The name of the affected client, if applicable;
- (c) The date the event occurred;
- (d) A description of the event and a clinical summary if the event is client related;
- (e) Root cause analysis and corrective action plans as required by chapter 70.56 RCW.

(6) The report note in subsection (3) of this section:

(a) Will allow the department to be informed of events which in the interest of the public will be reviewed and reported as required by chapter 70.56 RCW;

(b) Will be confidentially maintained by the department in accordance with the protections of the Public Disclosure Act, chapter 42.17 RCW, and other applicable laws and reporting requirements; and

(c) Does not relieve a birth center from complying with other applicable reporting or notification requirements of this chapter or those requirements relating to law enforcement or professional regulatory agencies.

(7)) (a) A childbirth center must report adverse health events to the department. The National Quality Forum identifies and defines twenty-nine serious reportable events (adverse health events) as updated and adopted in 2011.

(b) A childbirth center must comply with the reporting requirements under chapter 246-302 WAC. Reporting requirements under chapter 246-302 WAC do not relieve a birth center from complying with other applicable reporting or notification requirements of this chapter or those requirements relating to law enforcement or professional regulatory agencies.

(c) Adverse health events are listed in chapter 246-302 WAC.

(4) An applicant or licensee has the right to respond to and contest a statement of charges according to the following provisions:

(a) RCW 43.70.115, department of health authority for license approval, denial, restriction, conditioning, modification, suspension and revocation;

(b) Chapter 34.05 RCW, the Administrative Procedure Act; and

(c) Chapter 246-10 WAC, Adjudicative proceedings.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-010 Definitions. For the purposes of this chapter, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) ("Adverse health event" or "adverse event" means the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care as referenced in chapter 70.56 RCW.)

((4)) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

((5)) (4) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

((6)) (5) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. Excluded from this definition are a dental office, an ambulatory surgical facility licensed as part of a hospital under chapter 70.41 RCW or a practitioner's office where surgical procedures are conducted without general anesthesia.

((7)) (6) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

((8)) (7) "Authentication" means the process used to verify an entry is complete, accurate, and final.

((9)) (8) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

((10)) (9) "Clinical evidence" means evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

((11)) (10) "Department" means the Washington state department of health.

((12)) (11) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

((13)) (12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

((14)) (13) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

((15)) (14) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

((16)) (15) "Family" means individuals designated by a patient who need not be relatives.

((17)) (16) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

((18)) (17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

((19)) (18) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

((20)) (19) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

- (a) Treatment goals, with stipulated time frames;
- (b) Specific services to be utilized;
- (c) Designation of individuals responsible for specific service to be provided;
- (d) Discharge criteria with estimated time frames; and
- (e) Participation of the patient and the patient's designee as appropriate.

((21)) (20) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

((22)) (21) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

((23)) (22) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

((24)) (23) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

((25)) (24) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

((26)) (25) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

((27)) (26) "Neglect" means mistreatment or maltreatment, a disregard of consequences constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

((28)) (27) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

((29)) (28) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

((30)) (29) "Operating room" means a room intended for invasive procedures.

((31)) (30) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

((32)) (31) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

((33)) (32) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

((34)) (33) "Pharmacist" means an individual licensed by the state board of pharmacy under chapter 18.64 RCW.

((35)) (34) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

((36)) (35) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

((37)) (36) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

((38)) (37) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

((39)) (38) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical facility staff under defined circumstances recorded in policy and procedure.

((40)) (39) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

((41)) (40) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

((42)) (41) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

((43)) (42) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

((44)) (43) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tac-

tile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

((45)) (44) "Sexual assault" means, according to RCW 70.125.030, one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape or rape of a child;
- (c) Incest or indecent liberties;
- (d) Child molestation;
- (e) Sexual misconduct with a minor;
- (f) Custodial sexual misconduct;
- (g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

((46)) (45) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

((47)) (46) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

((48)) (47) "Surgical services" means invasive medical procedures that:

- (a) Utilize a knife, laser, cauterity, cytogenics, or chemicals; and
- (b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

((49)) (48) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

((50)) (49) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

((51)) (50) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

- (a) Pharmacologic, surgical, or supportive;
- (b) Specific for a disorder; or
- (c) Symptomatic to relieve symptoms without effecting a cure.

((52)) (51) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

((53)) (52) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-115 Governance. This section outlines the organizational guidance and oversight responsibilities of ambulatory surgical facility resources and staff to support safe patient care.

An ambulatory surgical facility must have a governing authority that is responsible for determining, implementing, monitoring and revising policies and procedures covering the operation of the facility that includes:

- (1) Selecting and periodically evaluating a chief executive officer or administrator;
- (2) Appointing and periodically reviewing a medical staff;
- (3) Approving the medical staff bylaws;
- (4) Reporting practitioners according to RCW 70.230.-120;
- (5) Informing patients of any unanticipated outcomes according to RCW 70.230.150;
- (6) Establishing and approving a coordinated quality performance improvement plan according to RCW 70.230.-080;
- (7) Establishing and approving a facility safety and emergency training program according to RCW 70.230.060;
- (8) Reporting adverse events and conducting root cause analyses according to ((RCW 70.56.020)) chapter 246-302 WAC;
- (9) Providing a patient and family grievance process including a time frame for resolving each grievance according to RCW 70.230.080 (1)(d);
- (10) Defining who can give and receive patient care orders that are consistent with professional licensing laws; and
- (11) Defining who can authenticate written or electronic orders for all drugs, intravenous solutions, blood, and medical treatments that are consistent with professional licensing laws.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-130 Adverse health events reporting requirements. ((1) As found in the list of serious reportable events adopted by the National Quality Forum in 2002 (and as updated), in its consensus report on serious reportable events in health care, "serious disability" means a physical or mental impairment that substantially limits the major life activities of a patient.

(2) Ambulatory surgical facilities must:

(a) Notify the department according to RCW 70.56.020 whenever an adverse event is confirmed in the facility; and

(b) Send the department a report regarding the event according to RCW 70.56.020.

(3) The department will assure all notifications and reports submitted to the department are maintained confidentially according to RCW 70.56.050-.) The National Quality Forum identifies and defines twenty-nine serious reportable events (adverse health events) as updated and adopted in 2011.

(1) An ambulatory surgical facility must report adverse health events to the department.

(2) An ambulatory surgical facility must comply with the reporting requirements under chapter 246-302 WAC.

(3) Adverse health events are listed in chapter 246-302 WAC.

AMENDATORY SECTION (Amending WSR 09-09-032, filed 4/7/09, effective 5/8/09)

WAC 246-330-155 Coordinated quality improvement program. The purpose of this section is to ensure the establishment and on-going maintenance of a coordinated quality improvement program. The intent is to improve the quality of health care services provided to patients and to identify and prevent medical malpractice.

An ambulatory surgical facility must:

(1) Have a facility-wide approach to process design and performance measurement, assessment, and improving patient care services according to RCW 70.230.080 including, but not limited to:

(a) A written performance improvement plan that is periodically evaluated;

(b) Performance improvement activities that are interdisciplinary and include at least one member of the governing authority;

(c) Prioritize performance improvement activities;

(d) Implement and monitor actions taken to improve performance;

(e) Education programs dealing with performance improvement, patient safety, medication errors, injury prevention; and

(f) Review serious or unanticipated patient outcomes in a timely manner.

(2) Systematically collect, measure and assess data on processes and outcomes related to patient care and organization functions;

(3) Collect, measure and assess data including, but not limited to:

(a) Operative, other invasive, and noninvasive procedures that place patients at risk;

(b) Infection rates, pathogen distributions and antimicrobial susceptibility profiles;

(c) Death;

(d) Medication management or administration related to wrong medication, wrong dose, wrong time, near misses and any other medication errors and incidents;

(e) Injuries, falls, restraint use, negative health outcomes and incidents injurious to patients in the ambulatory surgical facility;

(f) Adverse events according to chapter ((70.56 RCW)) 246-302 WAC;

(g) Discrepancies or patterns between preoperative and postoperative (including pathologic) diagnosis, including pathologic review of specimens removed during surgical or invasive procedures;

(h) Adverse drug reactions (as defined by the ambulatory surgical facility);

(i) Confirmed transfusion reactions;

(j) Patient grievances, needs, expectations, and satisfaction; and

(k) Quality control and risk management activities.

**WSR 12-11-081
PROPOSED RULES
SECRETARY OF STATE**

[Filed May 17, 2012, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-057.

Title of Rule and Other Identifying Information: Charitable solicitation organizations and charitable trusts.

Hearing Location(s): Dolliver Building, 801 Capitol Way South, 2nd Floor Conference Room, Olympia, WA 98504, on June 26, 2012, at 2:00.

Date of Intended Adoption: July 1, 2012.

Submit Written Comments to: Rebecca Sherrell, P.O. Box 40234, Olympia, WA 98504-0234, e-mail Rebecca.Sherrell@sos.wa.gov, fax (360) 586-4989, by June 27, 2012.

Assistance for Persons with Disabilities: Contact Sharon Baker by June 25, 2012, (360) 725-0310 or (800) 332-6483 (for WA only).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to streamline registration requirements, clarify language, and update requirement changes due to new legislation in 2011.

Reasons Supporting Proposal: 2011 legislative session, HB 1485, effective July 22, 2011, changed registration requirements. This proposal updates rules to reflect those changes.

Statutory Authority for Adoption: RCW 19.09.075, [19.09].079, [19.09].097, [19.09.]520.

Statute Being Implemented: Chapter 19.09 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Division of corporations, office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Rebecca Sherrell, 801 Capitol Way South, Olympia, WA 98504, (360) 725-0380; and Enforcement: Shannon Smith, office of the attorney general, (206) 389-3996.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No additional costs are imposed on businesses by these rules.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are adopting by reference, without material change, Washington state statutes and are not required to do a cost-benefit analysis per RCW 34.05.328 (5)[(b)][iii].

May 17, 2012

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-025 Definitions. (1) ((A "bona fide officer or employee" of a charitable organization is one:

(a) Whose conduct is subject to direct control by such organization;

(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and

(e) Whose compensation is not computed on funds raised or to be raised.

(2) "Annual gross revenue" means, for any accounting period, the total gross amounts, including cash or noncash contributions received by or on behalf of a charitable organization from all sources, without subtracting any costs or expenses.

(3) "Charitable organization" means any entity that solicits or collects contributions from the general public where the contribution is or is purported to be used to support a charitable purpose, but does not include any commercial fund raiser, commercial fund raising entity, commercial covenanter, or any fund raising counsel, as defined in this section. Churches and their integrated auxiliaries are not charitable organizations, but are subject to RCW 19.09.100 (12), (15), and (18).

((4)) "Charitable purpose" means any religious, charitable, scientific, testing for public safety, literary, or educational purpose or any other purpose that is beneficial to the community, including but not limited to recreational, environmental, humanitarian, patriotic, or civic purposes, the support of national or international amateur sports competition, the prevention of cruelty to children or animals, the advancement of social welfare, or the benefit of law enforcement personnel, firefighters, and other persons who protect public safety. The term "charitable" is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erecting or maintaining public buildings, monuments, or works; lessening the burdens of government; lessening neighborhood tensions; eliminating prejudice and discrimination; defending human and civil rights secured by law; and combating community deterioration and juvenile delinquency.

((5)) (2) "Charitable trust" means any real or personal property right held by an entity or person that is intended to be used for a charitable purpose(s). The trust may be created by will, deed, articles of incorporation, or other governing instrument. It may be express or constructive.

((6)) "Commercial covenanter" means a corporation, partnership, sole proprietorship, limited liability company, limited partnership, limited liability partnership, individual, or other entity that:

(a) Is regularly and primarily engaged in making sales of goods or services for profit directly to the general public; and

(b) Is not otherwise regularly or primarily engaged in making charitable solicitations in this state or otherwise raising funds in this state for one or more charitable organizations; and

(c) Represents to prospective purchasers that if they purchase a good or service from the commercial covenanter, a specified portion of the sales price or a certain sum of money or some other specified thing of value will be donated to a named charitable organization; and

(d) Does not ask purchasers to make checks or other instruments payable to a named charitable organization or any entity other than the commercial covenanter itself under its regular commercial name.

(7) "Commercial fund raiser" or "commercial fund raising entity" means any entity that for compensation or other consideration within this state directly or indirectly solicits or receives contributions for or on behalf of any charitable organization or charitable purpose, or that is engaged in the business of or is held out to persons in this state as independently engaged in the business of soliciting or receiving contributions for such purposes. However, a commercial covenanter, fund-raising counsel, or consultant, as defined by this section, is not a commercial fund raiser or commercial fund-raising entity.

((8)) (3) "Compensation," means salaries, wages, fees, commissions, or any other remuneration or valuable consideration. Compensation shall not include reimbursement for expenses incurred and documented or noncash awards or prizes, valued at one hundred dollars or less, given annually to each volunteer.

((9)) "Contribution" means the payment, donation, promise, or grant, for consideration or otherwise, of any money or property of any kind or value which contribution is wholly or partly induced by a solicitation. Reference to dollar amounts of "contributions" or "solicitations" in this chapter means in the case of payments or promises to pay for merchandise or rights of any description, the value of the total amount paid or promised to be paid for such merchandise or rights.

(10) "Cost of solicitation" means and includes all direct and indirect costs, expenditures, debts, obligations, salaries, wages, commissions, fees, or other money or thing of value paid or incurred in making a solicitation.

((11)) (4) "Entity" means an organization, individual or institution with its own existence for legal and/or federal tax purposes. It has the capacity to enter into agreements or contracts, assume obligations, incur and pay debts, sue and be sued in its own right, and to be held responsible for its actions. Entity may include, but is not limited to, an individual, organization, corporation, association, limited liability company, trust, group, partnership, proprietorship, company, estate, agency or unit of state government, person as defined in RCW 1.16.080, or any combination thereof.

For purposes of complying with registration requirements under Washington's Charitable Solicitations Act, "entity" does not include a branch, chapter, unit, affiliate or similar subordinate of another entity if said subordinate:

- (a) Is under the direct supervision and control of the related entity;
- (b) Does not have its own separate existence from the related entity for legal and/or federal tax purposes; and
- (c) The related entity maintains registration under chapter 19.09 RCW.

Regardless of whether or not a subordinate is required to register under the act, it shall comply with the conditions set forth under RCW 19.09.100.

~~((Interpretive note: Notwithstanding other facts that may be indicative of a separate existence for legal and federal tax purposes, a branch, chapter, unit, affiliate or similar subordinate: (i) has its own existence for legal purposes if said subordinate has an organizational structure separate from a related entity; and (ii) has its own existence for federal tax purposes if it has been issued a federal employer identification number separate from a related entity, falls under a central organization's IRS group exemption, has obtained its own federal tax exempt status separate from a related entity, is required to file a separate federal informational return, or is included in a central organization's group return.)~~

~~((12)) "Fund-raising counsel" or "consultant" means any entity or individual who is retained by a charitable organization for a fixed fee or rate, that is not computed on a percentage of funds raised, or to be raised, under a written agreement only to plan, advise, consult, or prepare materials for a solicitation of contributions in this state, but who does not manage, conduct, or carry on a fund raising campaign and who does not solicit contributions or employ, procure, or engage in any compensated person to solicit contributions, and who does not at any time, have custody or control of contributions. A volunteer, employee, or salaried officer of a charitable organization maintaining a permanent establishment or office in this state is not a fund raising counsel. An attorney, investment counselor, or banker who advises an individual, corporation, or association to make a charitable contribution is not a fund raising counsel as a result of the advice.~~

~~((13)) "General public" or "public" means any individual located in Washington state without a membership or other official relationship with a charitable organization before a solicitation by the charitable organization.~~

~~((14)) (5) "Income-producing assets" means assets that are purchased with the prospect that the assets will generate income or appreciate in the future. In finance, an investment is a monetary asset purchased with the idea that the asset will provide income in the future or appreciate and be sold at a higher price; these investments would include, but are not limited to stocks, bonds or real property.~~

~~((15)) "Membership" means that for the payment of fees, dues, assessments, etc., an organization provides services and confers a bona fide right, privilege, professional standing, honor, or other direct benefit, in addition to the right to vote, elect officers, or hold office. The term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation.~~

~~(16) "Other employee" of a charitable organization means any person:~~

~~(a) Whose conduct is subject to direct control by such organization;~~

~~(b) Who does not act in the manner of an independent contractor in his or her relation with the organization; and~~

~~(c) Who is not engaged in the business of or held out to persons in this state as independently engaged in the business of soliciting contributions for charitable purposes or religious activities.~~

~~(17) "Political organization" means those organizations whose activities are subject to chapter 42.17 RCW or the Federal Election Campaign Act of 1971, as amended.~~

~~(18) "Religious organizations" means those entities that are not churches or integrated auxiliaries as defined and includes nondenominational ministries, interdenominational and ecumenical organizations, mission organizations, speakers' organizations, faith-based social agencies, and other entities whose principal purpose is the study, practice, or advancement of religion.~~

~~((19)) (6) "Renewal date" means:~~

~~(a) For charitable organizations, the ((fifteenth)) last day of the ((fifth)) eleventh month after the close of the organization's ((fiscal or)) accounting year; and~~

~~(b) For commercial fund-raisers, the fifteenth day of the fifth month following the close of the organization's accounting year.~~

~~((20) The "review" as used in WAC 434-120-107(2), means a review of a tax reporting form, including financial presentations included in the tax return, for state reporting purposes in accordance with chapter 19.09 RCW. "Review" does not mean a "review engagement" as defined by the American Institute of Certified Public Accountants (AICPA) Statements of Standards for Accounting and Review Services (SSARS).~~

~~((21)) (7) "Secretary" means the secretary of state or the secretary's designee, or authorized representative.~~

~~((22) "Signed" means hand written, or, if the secretary adopts rules facilitating electronic filing that pertain to this chapter, in the manner prescribed by those rules.~~

~~((23)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services, or other thing in connection with:~~

~~(i) Any appeal is made for any charitable purpose; or~~

~~(ii) The name of any charitable organization is used as an inducement for consummating the sale; or~~

~~(iii) Any statement is made that implies that the whole or any part of the proceeds from the sale will be applied toward any charitable purpose or donated to any charitable organization.~~

~~(b) The solicitation shall be deemed complete when made, whether or not the person making it receives any contribution or makes any sale.~~

~~((e))) (8) "Solicitation" is defined in RCW 19.09.020(19) and includes:~~

~~(a) A commercial fund-raiser ((is considered to solicit)) soliciting or ((receive)) receiving contributions from the public directly if contributions are solicited or received by the fund-raiser or by any officer, employee, principal, or share-~~

holder of the commercial fund-raiser, including immediate family members.

((d)) (b) Contributions are considered to be solicited or received indirectly if they are solicited or received by:

(i) Any organization owned or controlled by the commercial fund-raiser or owned or controlled by any officer, employee, principal, or shareholder of the commercial fund-raiser, including immediate family members; or

(ii) Any person or organization, other than the charitable organization for which funds are solicited, with which the commercial fund-raiser as a contractual relationship governing the solicitation or receipt of contributions.

((e)) (c) "Solicitation" as defined in RCW 19.09.020 ((18)) (19), ((for the purposes of these regulations,)) does not include any of the following:

(i) An application or request for application for a grant, contract, or similar funding from any foundation, corporation, governmental agency or similar entity which has an established application and review procedure for reviewing such requests;

(ii) The attempt to sell a service or good which constitutes the basis of the charitable organization's activities under which the federal income tax exemption was granted, or is the primary purpose for the existence of the charitable organization. This includes, but is not limited to, admission to a theatrical or other performance presented by a charitable organization that is a drama, musical, dance, or similar group and fees for services such as a hospital provides or use of the charitable organization's facilities((; or

((iii) Bingo activities, raffles, and amusement games conducted under chapter 9.46 RCW and applicable rules of the Washington state gambling commission)).

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-040 Public information derived from registration. (1) Registration forms, and attachments, filed by charitable organizations and commercial fund-raisers pursuant to WAC 434-120-105 and 434-120-215, are available for public inspection or copying. However, Social Security numbers and financial account numbers are not public information. For purposes of public reports derived from that registration information, the secretary shall calculate, and make available to the public, the following information:

(2) For charitable organizations, the percentage of total expenditures in a reporting year allocated to charitable program services. This shall be calculated by dividing the amount reported as expended for charitable purposes by the amount reported as total expenses, and multiplying by 100.

(3) For commercial fund-raisers the percentage of the proceeds of charitable solicitations which are paid to or retained by charitable organizations. This shall be calculated by dividing the amount reported ((pursuant to WAC 434-120-215 (2)(i)(iii)(B) by the amount reported pursuant to WAC 434-120-215 (2)(i)(iii)(A),)) as received or retained by the charitable organization(s) after all fund-raising expenses have been deducted, by the amount reported as raised, regardless of who has possession of funds and multiplying by 100.

(4) Registrations of charitable trusts with several or mixed purposes shall not be made public under RCW 11.110.040 and 11.110.075.

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-045 Change in status, notification. An entity required to register under chapter 19.09 RCW shall notify the charities program in writing, within thirty days of any changes to its registration ((pursuant to WAC 434-120-105 and 434-120-215, or any other changes within thirty days after the change)).

The organization ((shall)) may submit the changes using the form that is available from the charities program and ((the appropriate fee per WAC 434-120-145)) request it by phone, e-mail, or access it on-line. There is no filing fee to submit changes of information.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-046 Record retention. (1) Charitable organizations and commercial fund-raisers shall keep, for a three-year period, the annual solicitation reports and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based.

(2) Charitable trusts shall keep, for a three-year period, their annual financial information, and the supporting documents including books, ledgers, prepared statements, compilations, reviews, or audit reports, or any other records on which they were based.

(3) Solicitation reports, financial statements, and any other records, shall be available to the secretary of state, attorney general or county prosecutor on request.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-050 Signatures for on-line filings.

When submitting an on-line filing, the person completing the filing shall sign the application by((- Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and)) following the directions for signing the web form.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-100 Who shall register—Exemptions.

(1) Any entity that ((will)) conducts ((a)) charitable solicitations or will solicit ((funds)) or collect contributions from the general public for charitable purposes shall register with the charities program under the Charitable Solicitations Act.

(2) Entities exempt from registration ((are)) include the following:

(a) ((Fund-raising counsel as defined in WAC 434-120-025(1));

((b))) Any political organization as defined in ((WAC 434-120-025(16))) RCW 19.09.020(15);

((e)) (b) Any entity which raises less than ((twenty-five)) fifty thousand dollars in revenue in any accounting year, if all ((of whose)) its activities including fund-raising, are conducted by volunteers, and ((whose)) no officers or members ((do not)) receive assets ((of)), or ((benefits)) compensation from the organization;

((d)) (c) A bona fide officer or other employee of the charitable organization for which the funds are solicited; and

((e)) (d) Any ((appeal for funds)) request for a contribution on behalf of a specific individual named in the solicitation, but only if all of the proceeds ((of the solicitation)) are given to or expended for the direct benefit of that individual. This does not include organizations that conduct solicitations for one or more individuals on a repeated or ongoing basis.

(3) Any entity that is exempt from registration by these regulations ((soliciting or conducting a solicitation)) shall comply with the conditions for solicitations as described in RCW 19.09.100.

(4) Interpretive note: The secretary of state does not interpret RCW 19.09.065 as requiring a registration by an employee of an educational institution who, as part of his or her employment with the institution, solicits contributions on behalf of a nonprofit charitable foundation affiliated with that institution, if the foundation is registered and the educational institution is either:

(a) A public school, college, or university operated by the state of Washington, one of its school districts, or a comparable public institution of another state or nation; or

(b) A private entity that is nonprofit and charitable, having a program of primary, secondary, or collegiate instruction comparable in scope to that of any public school or college operated by the state of Washington or any of its school districts.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-103 Required forms and filings. (1) A charitable organization complies with the ((filing and)) registration requirements of this chapter by filing ((the following documents)) with the secretary of state at the times, and in the manner, prescribed by these rules either the:

(a) State registration form described in ((WAC 434-120-105)) RCW 19.09.075(1). ((This)) The state registration form is available through the charities program; or

(b) Unified Registration Statement developed by the National Association of State Charity Officials (NASCO), if accompanied by the components identified for filing in Washington in the unified registration statement addendum. The unified registration statement and the addendum are available for download from the charities program web site.

(2) ((These)) The unified registration forms ((are)) may be used for an original registration ((form)), as well as ((for)) an annual renewal. The purpose of this ((report)) registration or renewal is to provide the public with basic information about the organization, as described in RCW 19.09.075 or WAC 434-120-105.

(3) Whether the state registration form or the unified registration statement ((must be)) and addendum are filed ((together)), each must be filed along with:

((a)) A solicitation report. ((This financial)) The solicitation report is filed by all charitable organizations, except those exempted by ((these rules)) law. The purpose of this report is to provide financial information ((regarding solicitations conducted during)) covering the reporting period. Solicitation reports are also filed as part of an annual renewal((; and

((b)) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240).

(4) ((The unified registration statement and the addendum are available for download at: <http://www.multistatefilings.org>.)

(5) The financial statement required by WAC 434-120-130 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

((6)) A separate contract registration form accompanied by a copy of the contract between a commercial fund-raiser and any charitable organization must be filed with the secretary, before the commencement of any campaign as provided by RCW 19.09.097.

(5) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-105 Charitable organization registration—Form and requirements. (1) Charitable organizations registering under this act shall submit the registration form described in WAC 434-120-103. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW shall not excuse the failure to comply.

(2) In addition to the requirements under RCW 19.09-075, a registration is not complete, and will not be accepted for filing, unless it includes:

(a) ((The name of the organization, and every address (including))) Both ((physical)) the mailing address and any ((mailing)) physical address if different((, telephone number(s), fax number(s), and)), federal taxpayer identification number, ((including)) and any electronic mail or internet addresses used by the organization. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) All of the names under which the organization will solicit contributions, including, but not limited to, acronyms, abbreviations, DBAs and program names used in charitable solicitations reflected in the registration;

(c) If the ((type of)) organization ((and taxpayer identification number)) is registered in Washington, the unified business identifier, and if the organization is ((registered in)) incorporated outside the state of Washington ((and date established, and if the organization is incorporated)), the state ((and date)) of incorporation;

(d) The beginning and ending dates of its ((current fiscal or)) most recently completed accounting year;

(e) ((The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations;

(g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization, including the:

(i) Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and

(ii) Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position;

(h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

(i) The purpose of the charitable organization, including, if applicable, the names and addresses of any specific beneficiaries which the charitable organization supports and to whom assets would be distributed to in the event of dissolution. When filing a renewal or an updated registration, the organization is not required to submit a list of beneficiaries if there have been no changes to that list;

(j) A statement indicating whether the organization is exempt from federal income tax, and copy of the letter by which the Internal Revenue Service granted the organization tax exempt status if the Internal Revenue Service has granted the organization such status. The organization shall indicate the section of the Internal Revenue Code under which they are exempt from the federal income tax;

(k) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

(l) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any commercial fund raiser who has the authority to expend funds or incur obligations on behalf of the organization;

(m) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

(n)) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-

keeping, whether such action has been instituted by a public agency or a private person or entity;

(f) A list of all states where the organization is registered for charitable solicitations;

(g) The officers or persons required under RCW 19.09.075 (1)(c) may include:

(i) Members of the board of directors or any committee or group serving the function of a board of directors, regardless of the name of the committee or group; and

(ii) Officers of the charitable organization, or the persons serving the function of officers, regardless of the title of the position.

(h) In addition to the financial information in RCW 19.09.075 (1)(h), a solicitation report of the charitable organization for the preceding ((fiscal or)) accounting year ((including)) includes, but is not limited to:

(i) ((The types of solicitations conducted;

(ii) The name, physical address, and telephone number of any commercial fund-raiser conducting solicitations on behalf of the organization in Washington during the period covered by this report; and

((iii))) All addresses, physical or mailing, used to solicit or collect contributions;

(ii) The total dollar value of contributions received from solicitations, ((which includes but is not limited to,)) special events, sale of inventory, and amounts collected on behalf of the charitable organization by a commercial fund-raiser;

((iv))) (iii) The total dollar value of revenue from all other sources;

((v))) (iv) Gross receipts, including amounts collected on behalf of the charitable organization by a commercial fund-raiser or commercial coventurer regardless of custody of funds. "Gross receipts" include, but are not limited to, contributions, gross revenue from special events, sales of inventory, goods or services (including tickets to events), and all other revenue from solicitations;

((vi))) (v) The amount of total expenditures used directly for charitable program services, including payments to affiliates if costs involved are not connected with the administrative or fund-raising functions of the reporting organization;

((vii))) (vi) The amount of total expenditures used for administrative and fund-raising costs, including amounts paid to or retained by a commercial fund-raiser or fund-raising counsel. "Administrative and fund-raising costs" include, but are not limited to, the following expenses if not directly related to program services; salaries, wages, compensation, legal, accounting, occupancy, equipment costs, printing and publications, telephone, postage, supplies, travel, meetings, fees for services (including fund-raising consultation), and cost of goods or inventory sold that are not directly related to program services.

((viii))) (vii) Total expenditures, including, but not limited to, amounts paid to or retained by a commercial fund-raiser, or fund-raising counsel, amounts expended for charitable program services, administrative expenses, fees for services, and fund-raising costs incurred by the charitable organization.

((ix))) (viii) Beginning assets; and

((x))) (ix) Ending assets.

((e)) A copy of the charitable organization's federal informational return (Form 990, 990PF, 990EZ, or 990T) reflecting the fiscal or accounting year covered by this report; if the federal informational return does not contain the total amount of money applied to charitable purposes, fund-raising costs and other expenses as required pursuant to RCW 19.09.075 (7)(e), a supplemental report may be required by the secretary. The supplemental report shall be in the form prescribed by the secretary.

((p)) (i) The charitable organization may provide additional information which the organization believes would be of assistance in understanding other reported information, or to provide context for reported information.

(3) The organization shall report actual figures, and shall not use estimates, when completing a solicitation report ((or a supplemental solicitation report)).

(4) All charitable organization registrations shall be signed and dated by the president, treasurer, or comparable officer of the organization or, in the absence of officers, person responsible for the organization.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-107 Audited financial report—Tiered reporting requirements ((effective January 1, 2010)). (1) ((Tier one: Charitable organizations with one million dollars or less in annual gross revenue averaged over the last three accounting years must meet the financial reporting requirements specified in RCW 19.09.075 and WAC 434-120-105.

(2) Tier two: Charitable organizations with more than one million dollars and up to three million dollars in annual gross revenue averaged over the last three accounting years, must provide one of the following:

(a) A photocopy of the federal tax reporting form (990, 990EZ, 990 PF) that has been prepared by a certified public accountant or other professional, who normally prepares or reviews federal returns in the ordinary course of their business; or

(b) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(c) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

(3) Tier three: Charitable organizations with more than three million dollars in annual gross revenue averaged over the last three accounting years, must submit one of the following:

(a) A photocopy of an audited financial statement prepared by an independent certified public accountant for the preceding accounting year; or

(b) For governmental entities, a photocopy of the most recent audited financial statement prepared by the applicable government auditing agency or other independent certified public accountant.

((4)) If an organization has been in existence for less than three years, the organization must calculate its average gross revenue based on the number of years the organization

has been in existence to determine which tier, per RCW 19.09.541, is applicable.

((5) Waiver of audit requirement:)) (2) For purposes of these regulations, the secretary may waive the requirement to ((file)) obtain an audited financial statement((s)) prepared by an independent certified public accountant for organizations with more than three million dollars in gross revenue averaged over the last three accounting years ((and)) that meet one of the following:

(a) Directly or indirectly receives five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements in RCW 19.09.541 (2). For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; or

(b) Organizations who can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-110 Organizations exempt from filing requirements—Optional ((filing)) registration. (1) Charitable organizations exempt from the filing requirements of this chapter under RCW ((19.09.076(1))) 19.09.081 and WAC 434-120-100(2)((b), (c), or (e))) may ((register)) file an optional registration with the charities program.

(2) Charitable organizations choosing to ((register)) file an optional registration under this section may register by completing the registration form specified by the secretary.

(3) Charitable organizations registered under this section may change or update their registration by filing the updated information with the charities program.

(4) Expedited processing under WAC 434-112-080 is available for registrations and updates under this section.

((5) The secretary offers this optional registration because some grant making entities and programs require registration with the charities program.))

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-135 Contributor lists. All charitable organizations registered under this act must keep records of all contributors to the organization for three years. If a commercial fund raiser manages a campaign for a charitable organization, either the commercial fund raiser or the charitable organization must be the entity responsible for maintaining the contributor records for that campaign. These records must include the names of the following contributors:

(1) Each contributing entity that collects individual donations from an employee or member group or a business,

turning them over to the charitable organization as a single sum, such as the United Way;

(2) Each corporation that contributed; and

(3) Each individual who contributed more than twenty-five dollars.

The records must be compiled and retrievable ((and compilable)) for a period of three years and must be turned over within ten working days upon written request of the attorney general or the county prosecutor, although the organization is not required to keep the names in a standard list format at all times.

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-140 How and when to register. (1) Initial registration: An entity required to register as a charitable organization must complete the form described in RCW 19.09.075 and WAC ((434-120-105)) 434-120-103 and submit it with the fee in ((WAC 434-120-145)) RCW 19.09.162 prior to conducting any solicitation.

(2) Annual renewal:

(a) An entity must renew its charitable registration by ((no later than)) submitting a renewal form and the fee in RCW 19.09.062(2) so they are received by the ((fifteenth)) last day of the ((fifth)) eleventh month after the end of its accounting year.

(b) The renewal must include the same information required for registration as described in RCW 19.09.075 and WAC 434-120-105 ((and RCW 19.09.075,)) except that a determination letter from the Internal Revenue Service need not be attached if it was previously filed. The solicitation report will be based on the most recent filing with the Internal Revenue Service or if the organization does not file with the Internal Revenue Service, the solicitation report will be based on the most recently completed accounting year. No organization may submit the same financial information for two consecutive years.

(c) ((No)) A change in an entity's accounting year ((may)) will not cause the due date of a renewal to be more than one year after the previous registration or renewal. ((For purposes of renewals that include financial information for a partial year, due to a change of accounting year, threshold levels for registration and financial statement requirements must be determined on a prorated basis.

(3) An organization must notify the charities program of a change in organization name, mailing address, organization structure, principal officer, Washington representative, tax status, accounting year, or any other information filed under RCW 19.09.075 or WAC 434-120-105.

(4) The organization must submit changes using the form available from the charities program within thirty days after the change.)

AMENDATORY SECTION (Amending WSR 10-22-048, filed 10/28/10, effective 11/28/10)

WAC 434-120-145 Fees. (1) ((Original)) Initial registration: Entities registering as charitable organizations must pay a fee of sixty dollars for the first year of registration; charitable organizations registering ((as exempt)) an optional

registration per RCW ((19.09.076(1))) 19.09.081, may do so at no ((fee)) charge.

(2) Annual renewal: Charitable organizations must pay ((a)) an annual renewal fee of forty dollars; organizations choosing to register ((as exempt)) an optional registration per ((WAC 434-120-110,)) RCW 19.09.081 are not required to ((renew)) file annual renewals.

(3) Information changes: Organizations filing changes of information described in ((WAC 434-120-105 will file)) RCW 19.09.085(3) may do so at no charge.

(4) Photocopy fees: For copy of a charitable organization registration form or letter, including the ((finance and)) solicitation report((s)), the fee is five dollars per entity.

(5) The fee for expedited service is twenty dollars for single on-line transactions within each new or existing charity's program file. The fee for expedited service of paper documents (in-person((;)) or mail ((or fax))) is fifty dollars for single or multiple transactions within each new or existing charity's program file. In addition, the filing fee for each transaction will apply.

(6) For service of process on a registered charity, commercial fund-raiser, or charitable trust, the fee is fifty dollars per address.

(7) Charitable organizations must pay a sixty dollar filing fee to reactivate their registration following closure per RCW 19.09.062 and pay applicable late fee per RCW 19.09.271.

(8) Charitable organizations must pay the twenty dollar filing fee to register a contract with a commercial fund-raiser as required in RCW 19.09.097 and WAC 434-120-240.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-160 Fees for late registration. (1) A charitable organization that fails to renew its registration by its renewal date must pay a late fee of fifty dollars. ((The charitable organization must pay an additional fifty dollar late fee for each year, including the current year, that it was not registered under this act, but was required to do so. If the registration has lapsed for a period of more than two years, the entity must provide solicitation information for the previous two years, and must reregister as a new charitable organization.))

(2) The fees for late registration are in addition to the filing fees under WAC 434-120-145, and any other remedies that may be imposed by law, including penalties for soliciting without being registered.

(3) The charitable organization may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.

NEW SECTION

WAC 434-120-165 Failure to renew, registration closure and reactivating registration—Charitable organizations. (1) A charitable organization who fails to renew its registration by the renewal date is considered to have a delin-

quent registration status and is subject to a late fee per WAC 434-120-160.

(a) The secretary will send by regular or electronic mail a delinquency notice within sixty days of the organization's delinquent status. The notice will include a request that the organization provide the items within thirty days to renew its registration. The organization's failure to receive the notice will not alter its delinquent status or relieve it of the requirement to renew.

(b) A charitable organization who fails to submit the required items within thirty days of notice will be deemed unregistered and its registration will be closed. Registration closure may also occur if the secretary's notice is not deliverable at the organization's mailing address of record.

(2) If a registration or renewal is incomplete, the secretary will contact the charitable organization by regular or electronic mail and request the missing items within thirty days. If the requested items are not received within thirty days, the registration or renewal will not be filed and the organization must resubmit the required form, filing fee and applicable late fee to register or renew. The organization may retain the original registration number assigned by the secretary. If the organization's renewal date has passed, its registration will be closed. Registration closure will also occur if the secretary's notice is not deliverable at the organization's mailing address of record. Filing fees are nonrefundable.

(3) A charitable organization whose registration has been closed must reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial sixty dollar filing fee. Late fees apply per WAC 434-120-160. The organization may retain the original registration number assigned by the secretary.

(4) A charitable organization that closes its registration voluntarily because it is no longer required to register may reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial sixty dollar filing fee. The organization may retain the original registration number assigned by the secretary.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-175 Voluntary verification information. Each organization registering ((under the aet)) with the secretary may submit additional information, not required by law, ((for its file)) if the information is intended to inform the public about its programs and activities and to verify its existence. ((The charities program may place such information in the organization's file for a specified period of time. Persons coming into the office may read such information; however, no voluntary verification information shall be mailed out.))

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-185 Charitable advisory council. The purpose of the charitable advisory council is to advise the secretary in the following areas:

(1) Training and education needs of charitable organizations within the state;

(2) Model policies related to governance and administration of charitable organizations in accordance with fiduciary principles;

(3) Emerging issues and trends affecting charitable organizations; and

(4) Other related issues at the request of the secretary.

The council will consist of thirteen members chosen by the secretary to represent a broad range of charities by size, purpose, geographic regions of the state, and general expertise in management and leadership of charitable organizations. An ex officio member will be appointed by the attorney general ((per RCW 19.09.510)).

Members serve at the pleasure of the secretary. Terms are staggered, with the original board drawing lots for two- and three-year terms. All following terms are three years but all terms expire no later than when the appointing secretary leaves office. Vacancies may be filled by the secretary upon notice of a vacancy from the member.

The council will elect a chairperson from its members annually. The frequency of meetings will be at least twice a year, but additional meetings may be called by the secretary or the council. Council members are not compensated for their service, but may be reimbursed for expenses incurred in the conduct of their official duties. Reimbursement is at current state rates for travel and all reimbursement requests must be received within thirty days of incurring the expense.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-200 Required filings. (1) A commercial fund-raiser complies with the ((filing and)) registration requirements of this chapter by filing the following documents with the secretary of state at the times, and in the manner, prescribed by these rules:

(a) Commercial fund-raiser registration form. This form is used as an ((original)) initial registration form, as well as an annual renewal form. The purpose of this report is to provide basic information about the organization, as described in RCW 19.09.079;

(b) Solicitation report. These reports are filed annually by all commercial fund-raisers, except those exempted by these rules. The purpose of ((these)) this report((s)) is to provide financial information ((regarding solicitations conducted)) during the reporting period, of an informational nature to the public((. These reports must be filed in the time and manner specified in WAC 434-120-215)); and

(c) All surety bonds required by WAC 434-120-260((; and

((d) All contracts between the commercial fund-raiser and all charitable organizations for which it solicits, as provided by WAC 434-120-240)).

(2) The financial statement required by WAC 434-120-255 does not need to be filed with the office of the secretary of state. The purpose of this statement is to verify and support the information filed in the solicitation report. This statement must be available upon request as provided in this chapter.

(3) This section is intended to be explanatory of other rules in this chapter, and not to modify or diminish the requirements of those rules.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-210 Who shall register. (1) Every commercial fund-raiser, as described in RCW 19.09.020(5), shall register each year, pursuant to WAC ((434-120-215)) 434-120-200 by completing the form described in RCW 19.09-079 and WAC 434-120-215 and submitting it with the fee in RCW 19.09.062(3) prior to conducting any solicitation.

(2) Entities exempt from registration include the following:

(a) Fund-raising counsel as defined in RCW 19.09.020

(10):

(b) Commercial coventurers as defined in 19.09.020(4); and

(c) Suppliers of goods and services to charitable organizations for fund-raising purposes are exempt from registration, if they are not otherwise engaged in the business of charitable fund-raising.

(3) If a commercial fund-raiser does business under more than one name, each name used by that entity must be registered and bonded separately.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-215 Commercial fund-raiser registration—Form and requirements. (1) Commercial fund-raisers registering under this act shall use the commercial fund-raiser registration form ((available in the office of the charities program)) described in WAC 434-120-200. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 19.09 RCW, shall not excuse the failure to comply. The secretary's acceptance of a registration or other filing which violates these rules or chapter 19.09 RCW shall not excuse the violation.

(2) In addition to the requirements under RCW 19.09-079, a registration is not complete, and will not be accepted for filing, unless it includes:

(a) Both the ((name of the organization, and every address (including both physical)) mailing address and ((any mailing)) physical address (if different), ((telephone number(s), fax number(s), of the commercial fund-raising entity under which contributions are being solicited or received, including)) and any electronic mail or internet addresses, as well as any physical or mailing addresses, used by the ((organization)) commercial fund-raiser to solicit or receive contributions. Private mail boxes must be identified through use of the designation "PMB" followed by the box number;

(b) ((The name(s), address(es), and telephone number(s) of the individual(s) responsible for fund-raising activities of the entity in Washington state;

((e))) The type of organization, federal taxpayer identification number, the unified business identifier if the organization is registered in Washington ((and date established,)) and

if the organization is incorporated, the state ((and date)) of incorporation;

((d))) (c) The ((end date)) beginning and ending dates of its ((current fiscal or)) preceding completed accounting year;

((e) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;

((f) A list of all states where the organization is registered for fund-raising, including any other names under which the organization is currently registered or has been registered in the past three years;

((g) The name, address, and telephone number of the officers or of persons accepting responsibility for the organization;

((h) The names of the three officers or employees receiving the greatest amount of compensation from the organization;

((i) The name and address of the person or entity with authority for the preparation of financial statements or the maintenance of financial information on behalf of the organization;

((j) The name, address, and telephone number of an individual with expenditure authority who can respond to questions regarding expenditures of funds, and the names and addresses of any charitable organizations who have given the commercial fund-raiser authority to expend funds or incur obligations on behalf of the organization;

((k) An irrevocable appointment of the secretary to receive service of process in noncriminal proceedings as provided in RCW 19.09.305;

((l))) (d) The court or other forum, case number and title of all legal actions, if any, in which a judgment or final order was entered, or for action is currently pending, against any organization or individual required to be identified in the registration. "Actions" include any administrative or judicial proceeding alleging that the entity has failed to comply with these rules, chapter 19.09 RCW, or state or federal laws pertaining to taxation, revenue, charitable solicitation, or record-keeping, whether such action has been instituted by a public agency or a private person or entity;

((e) A list of all states where the organization is registered for charitable solicitations;

((f) In addition to the financial information in RCW 19.09.079(6), a solicitation report is required of the fund-raising activities of the entity for the preceding ((fiscal or)) accounting year ((including)) and includes, but is not limited to:

((i) ((The types of fund-raising services conducted;

((ii) The name of each charitable organization to whom this entity has provided fund-raising services;

((iii) The total dollar value of the following;

((A))) Contributions received, either by the commercial fund-raiser or the charities with which the commercial fund-

raiser contracts, as a result of services provided by the commercial fund-raiser during the year shown above. (This is the total amount of money raised, regardless of who has possession of funds.)

((B)) (ii) Funds either retained by, or paid to, the charities with whom the commercial fund-raiser contracts, after fees and any expenses have been subtracted. (This is the portion of money raised that the charities receive or keep after all fund-raising expenses have been deducted.)

((iv) The name, address, and telephone number of any other commercial fund-raiser retained in the conduct of providing fund-raising services;))

(3) The commercial fund-raiser may provide additional information which the commercial fund-raiser believes would be of assistance in understanding other reported information, or to provide context for reported information.

(4) The commercial fund-raiser ((shall)) must report actual figures and shall not use estimates when completing a solicitation report ((or a supplemental solicitation report)).

(5) All commercial fund-raiser registrations shall be signed by an officer or owner of the commercial fund-raiser.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-225 Annual renewal. (1) Each commercial fund-raiser shall renew annually by submitting a renewal form and the filing fee in RCW 19.09.062 so they are received by no later than the fifteenth day of the fifth month after the end of its ((fiscal)) accounting year.

The renewal must include the same information required for registration as described in RCW 19.09.079 and WAC 434-120-215. The solicitation report will be based on the most recently completed accounting year. No organization may submit the same financial information for two consecutive years.

(2) No change in a fund-raiser's ((fiscal)) accounting year ((shall)) will cause the due date of a renewal to be more than one year after the previous registration or renewal. (For purposes of renewals that include financial information for a partial year, due to a change of fiscal year, threshold levels for financial statement requirements shall be determined on a prorated basis.))

AMENDATORY SECTION (Amending WSR 09-22-056, filed 10/30/09, effective 11/30/09)

WAC 434-120-240 Contract between a commercial fund-raiser and a charitable organization. (1) A commercial fund-raiser and charitable organization entering into a contract shall register the contract by completing the contract registration form, attaching a signed copy of the written contract, and filing the form and contract with the secretary. The contract shall be registered before the commencement of the campaign.

(2) The charitable organization is responsible for registering the contract, contract registration form and paying the appropriate fee per ((WAC 434-120-250)) RCW 19.09.062 (5).

(3) ((Both the contract and registration form shall be signed by the commercial fund-raiser owner or principal and

~~the charitable organization president, treasurer, or comparable officer.~~

((4))) In addition to the statutory requirements of RCW 19.09.097, the terms of the contract shall specify who will maintain the donor list.

NEW SECTION

WAC 434-120-245 Failure to renew, registration closure and reactivating registration—Commercial fund-raisers. (1) A commercial fund-raiser who fails to renew its registration by the renewal date is considered to have a delinquent registration status and is subject to a late fee per WAC 434-120-250.

(a) The secretary will send by regular or electronic mail a delinquency notice within sixty days of the organization's delinquent status. The notice will include a request that the organization provide the items within thirty days to renew its registration. The organization's failure to receive the notice will not alter its delinquent status or relieve it of the requirement to renew.

(b) A commercial fund-raiser who fails to submit the required items within thirty days of notice will be deemed unregistered and its registration will be closed. Registration closure may also occur if the secretary's notice is not deliverable at the organization's mailing address of record.

(2) If a registration or renewal is incomplete, the secretary will contact the commercial fund-raiser by regular or electronic mail and request the missing items within thirty days. If the requested items are not received within thirty days, the registration or renewal will not be filed and the organization must resubmit the required form, filing fee and applicable late fee to register or renew and it may retain the original registration number assigned by the secretary. If the organization's renewal date has passed, its registration will be closed. Registration closure will also occur if the secretary's notice is not deliverable at the organization's mailing address of record. Filing fees are nonrefundable.

(3) A commercial fund-raiser whose registration has been closed for failure to register or renew must reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial three hundred dollar filing fee. Late fees apply per WAC 434-120-250. The organization may retain the original registration number assigned by the secretary.

(4) A commercial fund-raiser that closes its registration voluntarily because it is no longer required to register may reactivate its registration by submitting an initial registration form including a solicitation report for the preceding completed accounting year and an initial three hundred dollar filing fee. The organization may retain the original registration number assigned by the secretary.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-250 Fees. All commercial fund-raisers must pay an ((original)) initial registration fee at the time of filing and an annual renewal fee.

(1) The fee for ((original)) initial registration in this state is three hundred dollars.

(2) The annual renewal fee is two hundred twenty-five dollars.

(3) There is no fee for filing changes in any information previously filed under RCW 19.09.079, and WAC 434-120-215.

(4) The fee for filing a contract with a charitable organization under RCW 19.09.097 and WAC 434-120-240 is twenty dollars.

(5) The late fee is fifty dollars for failing to renew registration as a commercial fund-raiser by the due date.

((The commercial fund-raiser must pay an additional late fee of one hundred dollars for each year that it was required to register under this act and failed to do so, including the current year.))

~~Hf) (a) The fees for late registration ((has lapsed for more than two years, the entity must provide solicitation information for the previous two years and must register as a new commercial fund-raiser under RCW 19.09.079,)) are in addition to ((paying any late fees due under this section.)~~

~~Any commercial fund-raiser failing to renew registration and conducting business may be subject to other penalties and remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative)) the filing fees and any other remedies that may be imposed by law, including penalties for soliciting without being registered. These penalties are cumulative.~~

~~(b) The commercial fund-raiser may ask the secretary to waive fees for late registration. The request must include a description of the circumstances that justify a waiver of the late fees. Under special circumstances the secretary may waive fees for late registration that are imposed by these regulations.~~

(6) The fee for expedited service is twenty dollars for a single on-line transaction within one commercial fund-raiser ((file)) registration. The fee for expedited service of paper documents (in-person((;)) or mail((, or fax))) is fifty dollars for single or multiple transactions within one commercial fund-raiser ((file)) registration. In addition, the filing fee for each transaction will apply.

(7) The photocopy fee is ten dollars for copies of the annual registration form or letter.

(8) Commercial fund-raisers must pay a three hundred dollar filing fee to reactivate their registration following registration closure per WAC 434-120-245 and pay applicable late fees.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-260 Surety bonds. ((In compliance with RCW 19.09.190 a registering commercial fund-raiser, as principal, shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least fifteen thousand dollars.)) Commercial fund-raisers must provide proof of bonding if the commercial fund-raiser engages, or plans to engage, in one or more of the ((following)) practices((:

((1) The fund-raiser directly or indirectly receives contributions from the public on behalf of any charitable organization; or

((2) The fund-raiser is compensated based upon funds raised or to be raised, number of solicitations made or to be made, or any similar method, even if the fund-raiser does not directly or indirectly receive the contributions; or

((3) The fund-raiser incurs or is authorized to incur expenses on behalf of the charitable organization; or

((4) Has not been registered with the secretary as a commercial fund-raiser for the preceding fiscal or accounting year shall execute a surety bond as principal with one or more sureties whose liability in the aggregate as such sureties will equal at least fifteen thousand dollars)) identified in RCW 19.09.191 (1)(a) through (d). The registering commercial fund-raiser shall submit proof of execution of a surety bond with one or more sureties whose liability in the aggregate will equal at least twenty-five thousand dollars.

AMENDATORY SECTION (Amending WSR 04-04-018, filed 1/23/04, effective 2/23/04)

WAC 434-120-307 Required filings. (1) Initial registration: Every trustee required to register by RCW 11.110.051 shall do so, in the time and in the manner described by RCW 11.110.060. Trustees shall use the registration form described by WAC 434-120-310, and file all other documents required by RCW 11.110.060. ((Trustees required to register shall also file with the secretary any later amendments to the trust instrument within four months of making the amendment.))

(2) Periodic reporting: Every trustee required to register by RCW 11.110.051 shall report annually as required by RCW 11.110.070. The annual reporting requirement is satisfied by filing the renewal form described by WAC 434-120-310(3) and filing a copy of the trust's federal informational tax return, with the secretary of state no later than the fifteenth day of the fifth month after the end of its fiscal or accounting year.

AMENDATORY SECTION (Amending WSR 09-01-106, filed 12/17/08, effective 1/17/09)

WAC 434-120-310 Charitable trust registration—Form and requirements. (1) Trustees registering under chapter 11.110 RCW shall use the registration form available in the office of the secretary of state. The secretary's failure to affirmatively reject or return an incomplete registration or other filing that does not fully comply with these rules or chapter 11.110 RCW shall not excuse the failure to comply.

(2) An initial registration form is not complete, and will not be accepted for filing, unless it includes:

(a) The trustee's name;

(b) The trustee's mailing address, and physical address if different;

(c) The name of the trust, its Federal Employer Identification Number, if any, or other identifying information sufficient to distinguish the trust from other registered trusts;

(d) A brief description of the charitable purposes of the trust, which may, at the trustee's option, include the names

and addresses of any charitable organizations benefited by the trust;

(e) The market value of all trust assets invested for incoming-producing purposes as of the date on which the trustee received possession or control of the trust corpus;

(f) A copy of the governing instrument creating the trust;

(g) A statement indicating whether the trust is exempt from federal income tax, and, if exempt, the section of the Internal Revenue Code under which the trust is exempt from federal income tax;

(h) A copy of the letter by which the Internal Revenue Service granted the trust tax exempt status if the Internal Revenue Service has granted the trust such status;

(i) The end date of its current fiscal or accounting year;

(j) A financial report of the trust for the preceding fiscal or accounting year, including, but not limited to:

(i) Beginning assets;

(ii) Total revenue;

(iii) Grants, contributions, and the amount of expenditures used directly for program services;

(iv) Compensation of officers, directors, trustees, etc.;

(v) Total expenses; and

(vi) Ending assets.

(k) A copy of the trust's federal informational tax return (Form 990, 990PF, 990T, or 990EZ) reflecting the fiscal or accounting year contained in this report;

(l) The name and telephone number of the preparer of the trust registration, if different from trustee.

(3) The renewal registration form required by this rule shall be the same as the form described in WAC 434-120-310 except that the information required by WAC 434-120-310 (2)(d), (e), (f), (g) and (h) is not required.

(4) The trust shall report actual figures, and shall not use estimates, when completing a financial report.

(5) All charitable trust registrations shall be signed by ((the trustee, or, if the trustee is a corporation, of the corporate officer or employee responsible for the trust));

(a) The trustee, person or entity legally responsible for the trust; or

(b) If the trustee is a corporation, the corporate officer or employee responsible for the trustee.

(6) A copy of the governing instrument creating the trust shall not be deemed sufficient to meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 10-15-036, filed 7/13/10, effective 8/13/10)

WAC 434-120-330 Annual fees. (1) Charitable trusts filing initial or renewal registrations must pay a fee of twenty-five dollars.

(2) The fee for expedited service is twenty dollars for a single on-line transaction within one charitable trust ((file)) registration. The fee for expedited service of paper documents (in-person((;)) or mail((,or fax))) is fifty dollars for single or multiple transactions within one charitable trust ((file)) registration. In addition, the filing fee for each transaction will apply.

(3) For a photocopy of an Internal Revenue Service Form 990EZ the fee is five dollars and for a copy of Form

990 or 990-PF the fee is ten dollars with a surcharge for forms exceeding 100 pages of copy, which is thirteen dollars for each fifty page increment.

(4) For a photocopy of a charitable trust registration form, the fee is five dollars.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-120-017	Office hours and location for charities program services.
WAC 434-120-030	Public records.
WAC 434-120-170	Use of particular names in solicitations.
WAC 434-120-180	Education program.
WAC 434-120-220	Change in status, notification.

WSR 12-11-094

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 21, 2012, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-014.

Title of Rule and Other Identifying Information: Chapter 392-502 WAC, On-line learning—Approval of multidistrict on-line providers.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington S.E., Policy Room, 2nd Floor, Olympia, WA 98504-7200, on June 26, 2012, at 10:00 a.m.

Date of Intended Adoption: June 26, 2012.

Submit Written Comments to: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, e-mail karl.nelson@k12.wa.us, fax (206) 616-4595, by June 26, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by June 24, 2012, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed changes:

(a) Add a definition for a "single district" on-line provider.

(b) Add a definition for an "affiliate" provider.

(c) Add a streamlined approval process for single district and affiliate providers.

(d) Provide a mechanism for a single district provider to transition to a multidistrict provider when the program's annual average headcount exceeds ten percent nonresident student enrollment.

(e) Provide for immediate approval of single district and affiliate providers who meet the stated criteria.

(f) Clarify course requirements that relate to chapter 392-410 WAC.

Reasons Supporting Proposal: ESHB 2065 (2011) broadened the approval requirements from "multidistrict" on-line providers to include all on-line providers. The proposed revisions add a "single-district" provider approval option. Those programs that aren't multidistrict, and who are not wholly adopting an approved provider's program, will be able to be approved using a streamlined process. This new process reduces the burden on districts and OSPI, while still maintaining the proper oversight and accountability, as these programs must agree to the provider "assurances" and are subject to rescindment.

Statutory Authority for Adoption: Chapter 28A.250 RCW.

Statute Being Implemented: Chapter 28A.250 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, (206) 616-9940; and Enforcement: Peter Tamayo, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 664-3631.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

May 21, 2012

Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-010 Definitions. As used in this chapter, the term:

(1) "Multidistrict on-line provider" means:

(a) A private or nonprofit organization that enters into a contract with a school district to provide on-line courses or programs to K-12 students from more than one school district;

(b) A private or nonprofit organization or a school district that enters into contracts with multiple school districts to provide on-line courses or programs to K-12 students from those districts; or

(c) Except as provided in (c)(i) and (ii) of this subsection, a school district that provides on-line courses or programs to students who reside outside the geographic boundaries of the school district.

(i) "Multidistrict on-line provider" does not include a school district on-line learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225.

(ii) "Multidistrict on-line provider" also does not include regional on-line learning programs that are jointly developed and implemented through an interdistrict cooperative program between two or more school districts or between one or

more school districts and an educational service district, unless the annual average headcount of students who reside outside the geographic boundaries of those school districts and who are enrolled in the regional on-line program is ten percent or more of the total program enrollment headcount. Any agreement establishing such a program must address, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2) "On-line course" means a course in which:

(a) More than half of the course content is delivered electronically using the internet or other computer-based methods; and

(b) More than half of the teaching is conducted from a remote location through an on-line course learning management system or other on-line or electronic tools.

An on-line course may be delivered to students at school as part of the regularly scheduled school day. An on-line course also may be delivered to students, in whole or in part, independently from a regular classroom schedule. On-line courses delivered to students independently of a regular classroom schedule must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.

(3) "On-line school program" means a school program that:

(a) Offers courses or grade-level course work that are delivered primarily electronically using the internet or other computer-based methods;

(b) Offers courses or grade-level course work that are taught by a teacher primarily from a remote location using on-line or other electronic tools. Students enrolled in an on-line program may have access to the teacher synchronously, asynchronously, or both;

(c) Offers a sequential set of on-line courses or grade-level course work that may be taken in a single school term or throughout the school year in a manner that could provide a full-time basic education program if so desired by the student. Students may enroll in the program as part-time or full-time students; and

(d) Has an on-line component of the program with on-line lessons and tools for student and data management.

An on-line school program may be delivered to students at school as part of the regularly scheduled school day. An on-line school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule. On-line programs delivered to students independently of a regular classroom schedule must comply with RCW 28A.150.262 and WAC 392-121-182 to qualify for state basic education funding.

(4) "On-line provider" means any provider of an on-line course or program, multidistrict on-line providers, all school district on-line learning programs, and all regional on-line learning programs.

(5) "Accrediting organizations" means the designated bodies identified by the superintendent of public instruction after consultation with the Washington council for on-line learning and published on the superintendent of public instruction web site. Accrediting organizations are for pro-

viders to use to satisfy the accreditation qualification for being an approved on-line provider.

(6) "Affiliate provider" means a school district that:

(a) Provides on-line courses offered by one or more approved on-line provider that provides the course content, the technology platform, and the instructional component of the courses; and

(b) Does not modify the content or instruction of the approved provider's offerings. An affiliate provider may not offer to its students any on-line course or courses that are provided by a nonapproved on-line provider.

(7) "Single-district provider" means a school district on-line provider that is not a multidistrict on-line provider or an affiliate provider.

(8) For the purposes of this section, "primarily" is defined as more than half.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-020 On-line provider approval process and timeline. (1) This section sets forth the process that on-line providers must follow to be approved in accordance with RCW 28A.250.020. On-line providers must be approved by the superintendent of public instruction for districts to collect state funding, to the extent otherwise allowed by state law, for courses offered by those providers in accordance with WAC 392-502-080.

(2) ~~((Any multidistrict on-line provider that was approved by the digital learning commons or accredited by the Northwest accreditation commission before July 26, 2009, and meets the Washington state teacher certification requirements is exempt from the initial approval process until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements including the approval assurances and criteria.~~

~~((3))) If at the end of the 2011-12 school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a school district or regional on-line learning program and are enrolled in a school district on-line program or regional on-line learning program increases to ten percent or more of the total on-line program enrollment headcount, the program:~~

~~(a) Must seek approval prior to November 1, 2013.~~

~~(b) May continue operating during the 2012-13 school year, but not the following school year unless approved as a multidistrict on-line provider.~~

~~((4))) (3) Prior to the 2012-13 school year, multidistrict on-line providers seeking approval must submit an application for approval. The application form is outlined on the superintendent of public instruction web site. The superintendent or his or her designee will review submitted applications for compliance with the assurances and designated approval criteria set forth in WAC 392-502-030 and must meet or exceed the acceptable defined score.~~

~~(4) Beginning with the 2013-14 school year, all on-line providers seeking approval must apply to the superintendent of public instruction for approval as follows:~~

~~(a) Multidistrict on-line providers must submit an application as outlined on the superintendent of public instruction~~

web site which will be reviewed for compliance with the ~~((requested assurances and))~~ designated approval criteria and must meet or exceed the acceptable defined score. Multidistrict on-line providers must comply with the superintendent of public instruction's required assurances.

(b) Affiliate providers must submit an affiliate provider application as outlined on the superintendent of public instruction web site. Affiliate providers must also comply with the superintendent of public instruction's required assurances.

(c) Single-district providers must submit a single-district provider application as outlined on the superintendent of public instruction web site. Single-district providers must also comply with the superintendent of public instruction's required assurances.

If, at the end of a school year, the annual average headcount for that school year of students who reside outside the geographic boundaries of a single-district provider and are enrolled in an on-line program offered by the single-district provider increases to ten percent or more of the total program enrollment headcount, the program shall be required to apply as a multidistrict on-line provider in the next approval cycle. The program may continue operating the year of the required approval review, but not the following school year unless approved as a multidistrict on-line provider.

(5) The superintendent of public instruction makes decisions regarding approval of multidistrict provider applications submitted pursuant to this chapter no later than November 1st of each year. ~~((A))~~ A multidistrict on-line provider's approval status takes effect the beginning of the school year following the date of the superintendent's approval of the on-line provider's application. Single-district and affiliate providers may apply at any point, and, subject to the requirements of approval, can be approved immediately by the superintendent of public instruction.

(6) For the 2011-12 school year, final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by February 15, 2012.

(7) Beginning with the 2012-13 school year, any proposed modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction web site by October 1st of each year. The superintendent will accept feedback from on the proposed modifications from any interested parties prior to November 1st of each year. Any final modifications to the conditions for approval, required assurances, approval criteria, and application forms will appear on the superintendent of public instruction's web site by January 1st of each year.

AMENDATORY SECTION (Amending WSR 12-03-067, filed 1/12/12, effective 2/12/12)

WAC 392-502-030 Approval assurances and criteria.

(1) This section sets forth the assurances and criteria that on-line providers must meet to be approved under this chapter.

(a) To be approved, on-line providers must provide the following assurances to the superintendent of public instruction:

(i) The on-line provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period.

(ii) Each course and program the on-line provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the on-line provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. On-line providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC.

(iv) For on-line providers that offer high school courses, the courses offered by the on-line provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the on-line provider's current and future courses in the ((following)) applicable areas meet the credit/content requirements ((as provided for in WAC 392-410-120 (Washington state history and government requirements), WAC 392-410-135 (Physical education—Grade school and high school requirement), and WAC 392-410-140 (Sexual health education—Definition—Optional course or subject matter—Excusal of students))) in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the on-line provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the on-line provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The on-line provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The on-line provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The on-line provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The on-line provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The on-line provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the on-line courses or programs.

(xii) The on-line provider retains responsibility for the quality of courses and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the on-line courses or programs.

(xiii) The on-line provider complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The on-line provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(b) Multidistrict on-line providers must meet the following approval criteria by a preponderance of evidence submitted with the on-line provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the on-line learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and on-line instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(2) After review by the on-line learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) On-line provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the on-

line provider applications using the approval criteria and scoring protocols.

(4) ((Prior to the 2013-14 school year, when developing local or regional)) Single-district provider on-line ((learning)) programs((, school districts)) must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

WSR 12-11-095
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 21, 2012, 9:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-048.

Title of Rule and Other Identifying Information: Unexcused absence definition, WAC 392-400-035.

Hearing Location(s): Office of Superintendent of Public Instruction, Brouillet Conference Room, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, on June 27, 2012, at 10:00 a.m.

Date of Intended Adoption: June 27, 2012.

Submit Written Comments to: Bill Huennekens, P.O. Box 47200, Olympia, WA, e-mail bill.huennekens@k12.wa.us, fax (360) 664-3683, by June 26, 2012.

Assistance for Persons with Disabilities: Contact Wanda Griffin by June 26, 2012, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule is to establish a standard definition for absences from school in the K-12 education system. Standard definition will facilitate the collection and reporting of comparable data and the calculation of indicators as required in the PASS act.

Reasons Supporting Proposal: The rule is consistent with model policies used in many school districts.

Statutory Authority for Adoption: RCW 28A.300.046.

Statute Being Implemented: RCW 28A.300.046.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The collection of enhance absence data at the student level was reviewed through a data governance process. The rule making is consistent with that process and will be reflected in the CEDARS data collection system.

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Huennekens, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6174; Implementation and Enforcement: Multiple across the agency, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 725-6000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposal does not regulate or impact small business.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is required to be adopted pursuant to RCW 28A.300.046.

May 21, 2012

Randy Dorn

State Superintendent
of Public Instruction

NEW SECTION

WAC 392-400-325 Statewide definition of excused and unexcused daily absences.

Excused daily absences

The following are valid excuses for absences from school:

(1) Participation in a district or school approved activity or instructional program;

(2) Illness, health condition or medical appointment (including, but not limited to, medical, counseling, dental or optometry);

(3) Family emergency including, but not limited to, a death or illness in the family;

(4) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(5) Court, judicial proceeding, or serving on a jury;

(6) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(7) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(8) Absence directly related to the student's homeless status;

(9) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(10) Absence resulting from a disciplinary/corrective action (e.g., short-term or long-term suspension, emergency expulsion); and

(11) Principal (or designee) and parent, guardian, or emancipated youth mutually agreed upon approved activity.

The school principal (or designee) has the authority to determine if an absence meets the above criteria for an excused absence.

Unexcused daily absences

Any absence from school is unexcused unless it meets one of the criteria above for an excused absence.

WSR 12-11-096
PROPOSED RULES
WASHINGTON STATE LOTTERY

[Filed May 21, 2012, 12:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR [12-07-012 on] March 12, 2012.

Title of Rule and Other Identifying Information: WAC 315-04-040 General license, describes a lottery retailer general license wherein the lottery director may designate a seasonal license period for businesses routinely closed for a minimum of three months not to exceed six months per calendar year. A seasonal license shall [be] placed in inactive status during the designated off season for the retailer.

Hearing Location(s): Washington's Lottery, 814 4th Avenue, Olympia, WA 98506, on June 26, 2012, at 9:00 a.m.

Date of Intended Adoption: June 26, 2012.

Submit Written Comments to: Jana Jones, P.O. Box 43000, Olympia, WA 98506, e-mail jjones@walottery.com, fax (360) 586-1039, by June 25, 2012.

Assistance for Persons with Disabilities: Contact Debbie Robinson by June 25, 2012, TTY (360) 586-0933 or (360) 664-4815.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed changes to the WAC will enable the lottery director to better serve "seasonal" retailers who would otherwise be unable to license under existing criteria due to the limitations of their business locations, i.e.: Access due to inclement weather in winter months or seasonal summer operations. Thus enabling the lottery to generate more revenue for the state.

Reasons Supporting Proposal: The current language requires that potential corporate licensees be denied a license if their are three significant incidents on its credit report. Some corporations may have minor incidents that are nevertheless defined as significant. The change in language will allow for the director's discretion in determining qualifications under credit criteria.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Statute Being Implemented: RCW 67.70.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state lottery commission, governmental.

Name of Agency Personnel Responsible for Drafting: Jana Jones, Washington's Lottery, (360) 664-4833; Implementation: Washington's Lottery, (360) 664-[4720]; and Enforcement: Len Brudvik, Washington's Lottery, (360) 664-4742.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The only business allowed by law to sell lottery products are existing licensed lottery retailers.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed WAC changes do not give rise to a cost-benefit analysis.

May 21, 2012

Jana L. Jones

Director of Legal Services

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-040 General license. The director may issue a general license, which authorizes a lottery retailer to conduct the routine sale of tickets at a fixed structure or facility, to an applicant who qualifies for licensure. The general license shall authorize the lottery retailer to conduct the routine sale of tickets at the location specified on the general license. An addendum to the general or provisional license may be obtained as provided for in WAC 315-04-220, permitting the lottery retailer to sell tickets in locations other than that specified on its license. A seasonal license designation may be issued by the director for businesses routinely closed for a minimum of three months not to exceed six months per calendar year. A seasonal license shall be placed in inactive status during the designated off-season for the retailer. The general license shall be valid until terminated by the lottery or the lottery retailer, provided, the lottery retailer shall provide periodic updates of license information as required by the director.

WSR 12-11-097

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 07-15—Filed May 21, 2012, 1:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-17-151.

Title of Rule and Other Identifying Information: The department of ecology is proposing to amend criteria for municipal solid waste landfills, chapter 173-351 WAC. This chapter applies to publicly or privately owned municipal solid waste landfill (MSWLF) units that may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. The purpose of this chapter is to establish minimum statewide standards for MSWLFs. The jurisdictional health departments can enact ordinances equally as or more stringent than chapter 173-351 WAC.

Hearing Location(s): Washington Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on June 26, 2012, at 1:30 p.m.; and at Big Bend Community College, Masto Conference Center, 7611 Bolling Street N.E., Moses Lake, WA 98837, on June 27, 2012, at 1:30 p.m.

Date of Intended Adoption: October 3, 2012.

Submit Written Comments to: Wayne Krafft, Washington Department of Ecology, Eastern Regional Office, Waste 2 Resources Program, 4601 North Monroe Street, Spokane, WA 99205-1295, e-mail rulecommentsw2r@ecy.wa.gov, fax (509) 329-3529, by July 6, 2012.

Assistance for Persons with Disabilities: Contact Michelle Payne by June 25, 2012, TTY 711 or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The new rules will adopt federal regulations and allow for issuance of research, development and demonstration permits; eliminate equivalent and arid liner designs and extend greater flexibil-

ity for alternate liner designs consistent with federal regulations; eliminate arid closure cover design criteria, adopt new postclosure care period standards, which are based on potential risk to human and environmental receptors; add alternative borehole program approval requirements to ensure quality characterization of the geology and hydrogeology of a site; add requirements to file an environmental covenant at closure in accordance with chapter 64.70 RCW, Uniform Environmental Covenants Act; include prevailing wage law provisions for financial assurance for closure; and address "general housekeeping" issues, including but not limited to, clarify definitions, make formatting changes, and ensure that the rules are consistent with chapter 173-350 WAC, Solid waste handling standards.

Reasons Supporting Proposal: These rules will implement changes to federal regulation 40 C.F.R. 258, Criteria for Municipal Solid Waste Landfills, adopted in 2004.

Statutory Authority for Adoption: Chapter 70.95 RCW.

Statute Being Implemented: Chapter 70.95 RCW, Solid waste management—Reduction and recycling.

Rule is necessary because of federal law, 40 C.F.R. 258, Criteria for Municipal Solid Waste Landfills.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Wayne Krafft, Spokane, Washington, (509) 329-3438.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The businesses that might be affected by this proposed change are not small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Michelle Payne, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6900, fax (360) 407-6900, e-mail mdav461@ecy.wa.gov.

May 21, 2012

Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-010 Purpose, applicability, and effective dates. (1) Purpose. The purpose of this regulation is to establish minimum statewide standards for all municipal solid waste landfill (MSWLF) units under the authority of chapter 70.95 RCW as amended in order that jurisdictional health departments can enact ordinances equally as or more stringent than this regulation and to have jurisdictional health departments implement such ordinances through a permit system set forth in Section 700. It is also the purpose of this regulation to implement rule making by the U.S. Environmental Protection Agency (EPA) under the authority of subtitle D of the Resource Conservation and Recovery Act (RCRA), as amended in 1984, and under the authority of Section 405(d) of the Clean Water Act as amended. The Clean Water Act required EPA "to establish standards for sewage sludge that is co-disposed with municipal solid waste." EPA satisfied both statutory requirements with the publication of

40 CFR Part 258-Criteria For Municipal Solid Waste Landfills on October 9, 1991. These minimum statewide criteria ensure the protection of human health and the environment.

(2) Applicability.

(a) These criteria apply to new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this regulation((;)). All other solid waste disposal facilities and practices that are not regulated under subtitle C of RCRA and chapter 70.105 RCW are subject to the criteria contained in 40 CFR Part 257, Criteria For Classification of Solid Waste Disposal Facilities, chapter 173-350 WAC, and/or chapter 173-304 WAC as amended.

Note: These rules do not apply to facilities that receive only inert ((and)) waste, demolition waste, wood waste, industrial solid wastes, or other types of solid waste (other than household waste) disposed of in ((limited purpose)) landfills regulated in chapter ((173-304)) 173-350 WAC, ((minimum functional standards for)) Solid waste handling standards. Co-disposal of any solid waste with household waste is governed by these rules.

(b) These criteria do not apply to MSWLF units that do not receive waste on or after ((the effective date of this chapter)) November 26, 1993. MSWLF units that stopped receiving waste prior to October 9, 1991, are subject to closure and post-closure rules under chapter 173-304 WAC, the Minimum Functional Standards for Solid Waste Handling. MSWLF units that received waste on and after October 9, 1991, but stop receiving waste prior to ((the effective date of this rule)) November 26, 1993:

(i) Are also subject to federal closure rules under 40 CFR Part 258.60(a);

(ii) Will be subject to all the requirements of this regulation unless otherwise specified, if such MSWLF units fail to meet the federal closure rules under 40 CFR Part 258.60(a) by April 9, 1994, and the closure standards of chapter 173-304 WAC; except that jurisdictional health departments may grant time extensions to complete closure under 40 CFR Part 258.60(a) by October 9, 1994; and

(iii) Will be subject to the groundwater monitoring and ((corrective)) remedial action requirements of WAC 173-351-400 and the permitting requirements of WAC 173-351-700 if such MSWLF units are part of a multiunit groundwater monitoring system of WAC 173-351-450(4).

(c) All MSWLF units that receive waste on or after ((the effective date of this chapter)) November 26, 1993, must comply with this chapter by ((the effective date of this chapter)) November 26, 1993, unless:

(i) Later effective dates are specified elsewhere in this chapter, such as WAC 173-351-400 (1)(b), groundwater monitoring ((and WAC 173-351-600 (4)(e))); or

(ii) The MSWLF unit is an existing MSWLF unit or an existing lateral expansion of an existing unit that:

(A) Disposed of 100 tons per day or less of solid waste during a representative period prior to ((the effective date of this chapter)) November 26, 1993;

(B) Does not dispose of more than an average of 100 tons per day of solid waste each month between ((the effective date of this chapter)) November 26, 1993, and April 9, 1994; and

(C) Is not on the National Priorities List (NPL) as found in Appendix B to 40 CFR Part 300.

(d) MSWLF units that meet conditions of (c) of this subsection are exempt from all requirements of this rule but must meet the final cover requirement specified in 40 CFR 258.60(a) and the requirements of chapter 173-304 WAC. The final cover must be installed by October 9, 1994. Owners or operators of MSWLF units described in (c) and (d) of this section that fail to complete cover installation by October 9, 1994, will be subject to all requirements of this chapter, unless otherwise specified.

(e) MSWLF units failing to satisfy these criteria are considered open dumps for purposes of state solid waste management planning under RCRA.

(f) MSWLF units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

(g) MSWLF units containing sewage sludge and failing to satisfy these criteria violate Sections 309 and 405(e) of the Federal Clean Water Act.

Note: All state codes standards, rules and regulations cited in this chapter are available by writing to the Department of Ecology, P.O. Box 4-7600, Olympia, Washington 98504-7600, or call 1-800-RECYCLE for the location of the nearest regional office of the department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-100 Definitions. Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this regulation; additional definitions appear in the specific sections to which they apply.

"Active area" means that part of a facility that includes the active portion and portions of a facility that recycle, store, treat, or dispose of solid (including liquid) wastes. The active area includes leachate treatment facilities and runoff ponds. It excludes run-on ponds and on-site roads which are used for any purpose; on-site roads are considered part of the buffer zone. See active portion and buffer zone definition below.

"Active life" means the period ((~~of operation~~)) beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with WAC 173-351-500(1). Closure ((~~and post closure care~~)) criteria.

"Active portion" means that part of a facility or MSWLF unit that has received or is receiving wastes and that has not been closed in accordance with WAC 173-351-500(1), Closure ((~~and post closure care~~)) criteria.

"Airport((-))" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities. See WAC 173-351-130 (2)(d)(i).

"Areas susceptible to mass movement((-))" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fuction, block sliding, and rock fall. See WAC 173-351-130 (7)(b)(iv).

(("Arid" means locations in the state of Washington having less than twelve inches (30 centimeters) of precipitation annually.))

"Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under chapter 70.95J RCW. Biosolids includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements of chapter 70.95J RCW.

"Bird hazard((-))" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants. See WAC 173-351-130 (2)(d)(ii).

"Buffer zone" means that part of a facility which lies between the active area and the property boundary.

"Channel migration zone" means the lateral extent of likely movement of a stream or river channel along a stream reach.

"Cleanup action plan" means the document that selects the cleanup action and specifies cleanup standards and other requirements for the cleanup action. These include:

- A final cleanup action plan issued by the department (or a record of decision prepared under the federal cleanup law) meeting the requirements of WAC 173-340-380;

- Cleanup action plans developed by the owner or operator of a MSWLF unit in accordance with the procedures in WAC 173-340-350 through 173-340-390 for independent remedial actions; and

- Plans developed for interim actions conducted under WAC 173-340-430.

"Closure" means those actions taken by the owner or operator of a MSWLF unit or facility to cease disposal operations and to ensure that a MSWLF unit or facility is closed in conformance with applicable regulations at the time of such closures and to prepare the site for the post-closure period. Closure is considered part of operation. See definition of operation.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Composite layer." See WAC 173-351-500 (1)(a)(i)(B).

"Composite liner." See WAC 173-351-300 ((2)(a)(ii))) (3).

"Construction quality assurance" means a planned system of activities that provide assurance that a facility is constructed as specified in the design and that the materials used in construction are manufactured according to specifications. Construction quality assurance includes inspections, verifications, audits, and evaluations of materials and workmanship necessary to determine and document the quality of the constructed facility.

"Construction quality control" means a planned system of activities that is used to directly monitor and control the quality of a construction project. Construction quality controls are the measures under taken by the contractor or installer to determine compliance with requirements for workmanship and materials put forth in the plans and specification for the construction project.

((Contaminate" means to allow to discharge a substance into groundwater that would cause:

The concentration of that substance in the groundwater to exceed the maximum contamination level specified in chapter 173-200 WAC; or

A statistically significant increase in the concentration of that substance in the groundwater where the existing concentration of that substance exceeds the maximum contaminant level specified in chapter 173-200 WAC; or

A statistically significant increase above background in the concentration of a substance which:

Is not specified in chapter 173-200 WAC; and
Is present in the solid waste; and

Has been determined to present a substantial risk to human health or the environment in the concentrations found at the point of compliance by the jurisdictional health department in consultation with the department and the department of health.

"Dangerous wastes" means any solid waste designated as dangerous waste under chapter 173-303 WAC, the Dangerous Waste regulations.

"Demolition waste" means solid waste, largely inert waste resulting from the demolition or razing of buildings, roads and other man made structures.) "Contaminant" means any chemical, physical, biological, or radiological substance that does not occur naturally in the environment or that occurs at concentrations greater than natural background levels.

"Contaminated" or "contamination" means the alteration of the physical, chemical, biological, or radiological properties of soil or waters of the state such that the soil or water could pose a threat to human health or the environment or the alteration is a violation of any applicable environmental regulation.

"Demonstration" means a showing by the owner or operator that human health and the environment can be protected as equally as a given requirement in the regulation. A demonstration is made in the application for a permit under WAC 173-351-700. A successful demonstration allows or authorizes an activity authorized for the life of the facility unless an alternative time period is approved by the jurisdictional health department.

"Department" means the department of ecology.

"Disease vectors((.))" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans. See WAC 173-351-200 (3)(b).

"Displacement((.))" means the relative movement of any two sides of a fault measured in any direction. See WAC 173-351-130 (5)(b)(ii).

"Disposal" or "deposition" means the discharge, deposit, injection, dumping, leaking, or placing of any solid waste into or on any land or water.

"Establish" means to construct a new or laterally expanded MSWLF unit.

"Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of the appropriate dates specified in WAC 173-351-010 (2)(c). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good waste management practices, including operating plans

approved under chapter 173-304 WAC. ((For the purposes of this rule, any existing horizontal expansion approved by the jurisdictional health department for which as-built plans documenting construction prior to the effective date of this chapter, have been prepared and submitted to the jurisdictional health department shall be considered an existing MSWLF unit.))

"Fault((.))" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side. See WAC 173-351-130 (5)(b)(i).

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Flood plain((.))" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood. See WAC 173-351-130 (3)(b)(i).

"Free liquids((.))" means any portion of material passing through and dropping from a filter as determined by Method 9095B (Paint Filter Liquids Test), in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846. See WAC 173-351-200(9).

"Gas condensate((.))" means the liquid generated as a result of gas recovery processes at the MSWLF unit. See WAC 173-351-200 (9)(c)(ii).

"Groundwater" means water below the land surface in a zone of saturation.

"Holocene((.))" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. See WAC 173-351-130 (5)(b)(iii).

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including household hazardous waste) (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas). This term does not include commercial, industrial, inert and demolition waste, or wood waste.

Note: Sanitary waste in septic tanks that is not disposed of in a MSWLF unit is subject to other state and federal rules.

"Hydrostratigraphic unit" means any water-bearing geologic unit or units hydraulically connected or grouped together on the basis of similar hydraulic conductivity which can be reasonably monitored; several geologic formations or part of a geologic formation may be grouped into a single hydrostratigraphic unit; perched sand lenses may be considered a hydrostratigraphic unit or part of a hydrostratigraphic unit, for example.

Note: 'Hydraulically connected' denotes water-bearing units which can transmit water to other transmissive units.

"Inert waste" means ((noncombustible, nondangerous solid wastes that are likely to retain their physical and chemical structure under expected conditions of disposal, including resistance to biological attack and chemical attack from acidic rain water)) solid waste identified as inert waste in chapter 173-350 WAC, Solid waste handling standards.

"Industrial solid wastes" means solid waste or waste by-products generated by manufacturing or industrial processes

such as scraps, trimmings, packing, pallets, and other discarded materials not otherwise designated as dangerous waste under chapter 173-303 WAC, the Dangerous waste regulations. This term does not include commercial, inert, demolition, construction, woodwaste, mining waste, or oil and gas waste but does include lunch room, office, or other similar waste generated by employees at the industrial facility.

"Jurisdictional health department" means city, county, city-county, or district public health department as defined in chapters 70.05, 70.08, and 70.46 RCW.

"Landfill." See "Facility."

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit that is not an existing horizontal expansion. (See also definition of "existing MSWLF unit.")

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Lithified earth material((-))" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface. See WAC 173-351-200 (6)(b)(iii).

"Liquid waste((-))" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846. See WAC 173-351-200 (9)(c)(i).

"Lower explosive limit((-))" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees C and atmospheric pressure. See WAC 173-351-200 (4)(d).

"Maximum horizontal acceleration in lithified earth material((-))" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment. See WAC 173-351-200 (6)(b)(ii).

"Modification" means a substantial change in the design or operational plans including removal of a design element of a MSWLF unit previously set forth in a permit application or a disposal or processing activity that is not approved in the permit. To be considered a substantial change, a modification must be reasonably related to a specific requirement of this rule. Lateral expansions, a fifty percent increase or greater in design volume capacity or changes resulting in significant adverse environmental impacts that have ((lead)) led a responsible official to issue a declaration of significance under WAC 197-11-736 ((shall)) are not ((be)) considered a modification but ((would)) require permit reissuance under these rules.

"Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. For the purposes

of this rule sewage sludge generated from publicly owned leachate waste treatment works that receive sewage from on-site sanitary facilities ((shall)) are not ((be considered to be)) municipal sewage sludge.

"Municipal solid waste landfill unit (MSWLF unit)" means a discrete area of land or an excavation that receives household waste, and that is not a land application ((unit)) site, surface impoundment, injection well, or ((waste)) pile, as those terms are defined under chapter ((173-304)) 173-350 WAC, ((the Minimum functional standards for)) Solid waste handling standards or chapter 173-218 WAC, Underground injection control program. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally-exempt small quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

"Natural background" means the concentration of chemical, physical, biological, or radiological substances consistently present in the environment that has not been influenced by regional or localized human activities. Metals at concentrations naturally occurring in bedrock, sediments and soils due solely to the geologic processes that formed the materials are natural background. In addition, low concentrations of other persistent substances due solely to the global use or formation of these substances are natural background.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to ((the effective date of this regulation)).

"Nonarid" means locations in the state of Washington having equal to or more than twelve inches (30 centimeters) of precipitation annually)) November 26, 1993.

"Nuisance" means unlawfully doing an act, or omitting to perform a duty, which act or omission either annoys, injures, or endangers the comfort, repose, health or safety of others, offends decency, or unlawfully interferes with, obstructs or tends to obstruct, any lake or navigable river, bay, stream, canal, or basin, or any public park, square, street or highway; or in any way renders other persons insecure in life, or in the use of property.

"100-year flood((-))" or "base flood" means a flood that has a one percent or less chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in one hundred years on the average over a significantly long period. See WAC 173-351-130 (3)(b)(ii).

"Open burning" means the combustion of solid waste without:

Control of combustion air to maintain adequate temperature for efficient combustion;

Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and

Control of the emission of the combustion products.

"Operator" means the person(s) responsible for the overall operation of a facility or part of a facility.

"Operation" means those actions taken by an owner or operator of a facility or MSWLF unit beginning with waste acceptance at a facility or MSWLF unit up to and including closure of the facility or MSWLF unit.

"Owner" means the person(s) who owns a facility or part of a facility.

"Point of compliance," ((means the point located on land owned by the owner of the MSWLF unit, and is no more than one hundred fifty meters (four hundred ninety two feet) from the waste management unit boundary; see also WAC 173-351-300(2)(e);)) See WAC 173-351-300(6).

"Poor foundation conditions((::))" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit. See WAC 173-351-130 (7)(b)(ii).

"Post-closure" means those actions taken by an owner or operator of a facility or MSWLF unit after closure.

"Purchase" means execution of a long term lease, securing of options to purchase or execution of agreements to purchase.

((Qualified ground water scientist." See WAC 173-351-400(2).))

"Random inspection." See WAC 173-351-200 (1)(b)(ii).

"Regulated dangerous waste((::))" means a solid waste that is a dangerous waste as defined in WAC 173-303-040 that is not excluded from regulation as a dangerous waste under WAC 173-303-071 or was not generated by an exempted small quantity generator as defined in WAC 173-303-070. See WAC 173-351-200 (1)(b)(i).

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the removal of materials at a disposal facility, or intermediate solid waste-handling facility, without the approval of the owner or operator and the jurisdictional health department.

"Seismic impact zone((::))" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years. See WAC 173-351-130 (6)(b)(i).

"Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

"Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

"Sole source aquifer((::))" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523). See WAC 173-351-140 (1)(b)(vii).

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to garbage, rubbish, ashes, industrial wastes, commercial waste, swill, sewage sludge, demolition and construction wastes,

abandoned vehicles or parts thereof, discarded commodities and recyclable materials.

"Structural components((::))" means liners, leachate collection systems, final covers, run-on/runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment. See WAC 173-351-130 (7)(b)(ii).

"Unstable area((::))" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, and areas susceptible to mass movements. See WAC 173-351-130 (7)(b)(i).

"Vadose zone" means that portion of a geologic formation in which soil pores contain some water, the pressure of that water is less than atmospheric, and the formation occurs above the zone of saturation.

"Vulnerability((::))" means the propensity or likelihood of a sole source aquifer to become contaminated should the integrity of the engineering control (including liners) fail; it is a measure of the propensity to deteriorate the water quality of a sole source aquifer, and takes into account an assessment of the physical barriers, the physical movement of contaminants, the hydraulic properties of the subsurface lithology; the rate of a contaminant plume movement; the physical and chemical characteristics of contaminants; and it also includes an assessment of the likelihood and ease for contaminant removal or cleanup, or the arrest of contamination, so as to not impact any further portion of the designated sole source aquifer. See WAC 173-351-140 (1)(b).

"Waste management unit" means a MSWLF unit.

"Waste management unit boundary" means a vertical surface located at the hydraulically down gradient limit of the unit. This vertical surface extends down into the hydrostratigraphic unit(s) identified in the hydrogeologic report.

"Waters of the state" means lakes, rivers, ponds, streams, inland waters, undergroundwaters, salt water, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

"Wetlands((::))" means those areas that are defined in 40 CFR 232.2(r): Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas. See WAC 173-351-130 (4)(b).

(("Woodwaste" means solid waste consisting of wood pieces or particles generated as a by product or waste from the manufacturing of wood products, handling and storage of raw materials and trees and stumps.))

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-130 Location restrictions. (1) Applicability.

(a) On and after ((the effective date of this chapter)) November 26, 1993, all MSWLF units ((shall)) must meet

the ((~~locational~~) location) restrictions of this section unless otherwise specified.

(b) Existing MSWLF units that cannot make the demonstration specified in subsection (2)(a) of this section, pertaining to airports, subsection (3)(a) of this section, pertaining to flood plains, subsection (7)(a) of this section, pertaining to unstable areas, must close by October 9, 1996, and conduct post-closure in accordance with WAC 173-351-500, Closure and post-closure care.

(c) The deadline for closure required by (b) of this subsection may be extended up to two years if the owner or operator demonstrates to the jurisdictional health department during the permitting process of WAC 173-351-700 that:

(i) There is no available alternative disposal capacity; and

(ii) There is no immediate threat to human health and the environment.

Note: Owners or operators of MSWLFs should be aware that the state department of health has adopted a state wellhead protection program in accordance with section 1428 of the Safe Drinking Water Act. Owners and operators should also be aware of ((~~locational~~) location) restrictions which may exist through the process of designating and implementing Groundwater Management Areas, under chapter 173-100 WAC, and through the Special Protection Areas of chapter 173-200 WAC.

(2) Airport safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and/or lateral expansions that are located within ten thousand feet (three thousand forty-eight meters) of any airport runway end used by turbojet aircraft or within five thousand feet (one thousand twenty-four meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units and/or lateral expansions within a ((~~five-mile-eight~~) six-mile (ten kilometer)) radius of any airport runway end used by turbojet or piston-type aircraft must notify the effected airport and the Federal Aviation Administration (FAA) and conform to all applicable requirements.

(c) The owner or operator must place the demonstration required by (a) of this subsection in the application for a permit under WAC 173-351-700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)).

(d) For purposes of this subsection:

(i) "Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(ii) "Bird hazard" means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(3) Flood plains.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year flood plains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the flood plain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-

700 ((~~and be issued a solid waste permit by the jurisdictional health department~~)).

(b) For purposes of this subsection:

(i) "Flood plain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(ii) "100-year flood" or "base flood" means a flood that has a ((~~one percent~~) one percent) or less chance of recurring in any given year or a flood of a magnitude ((~~equaled~~) equaled) or exceeded once in one hundred years on the average over a significantly long period.

(iii) "Washout" means the carrying away of solid waste by waters of the base flood.

(4) Wetlands.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located in wetlands, unless the owner or operator can make the following demonstrations during the permit process of WAC 173-351-700:

(i) The construction and operation of the MSWLF unit will not:

(A) Cause or contribute to violations of chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington and chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;

(B) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Federal Clean Water Act or chapter 173-220 WAC, the National Pollutant discharge elimination system permit program;

(C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973; and

(D) Violate any requirement under the Federal Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(ii) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate during the permit process of WAC 173-351-700 the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(A) Erosion, stability, and migration potential of native wetland soils, ((~~muds~~) mud), and deposits used to support the MSWLF unit;

(B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(C) The volume and chemical nature of the waste managed in the MSWLF unit;

(D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(E) The potential effects of catastrophic release of solid waste to the wetland and the resulting impacts on the environment; and

(F) Any additional factors, as necessary, to demonstrate during the permit process of WAC 173-351-700 that ecological resources in the wetland are sufficiently protected.

(iii) Where applicable under Section 404 of the Federal Clean Water Act or applicable state wetlands laws and regulations (e.g. chapter 173-22 WAC, Adoption of designations

of wetlands associated with shorelines of the state), the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(iv) To the extent required under Section 404 of the Federal Clean Water Act steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by:

(A) Avoiding impacts to wetlands to the maximum extent practicable as required by (a)(iii) of this subsection;

(B) Minimizing unavoidable impacts to the maximum extent practicable; and

(C) Finally offsetting remaining unavoidable wetlands impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration and maintenance of existing degraded wetlands or creation of man-made wetlands);

(v) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this subsection, "wetlands" means those areas that are defined in 40 CFR 232.2(r): Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

(5) Fault areas.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located within two hundred feet (sixty meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates during the permit process of WAC 173-351-700 that an alternative setback distance of less than two hundred feet (sixty meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this subsection:

(i) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.

(iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

(6) Seismic impact zones.

(a) New MSWLF units and lateral expansions ((~~shall~~)) must not be located in seismic impact zones, unless the owner or operator demonstrates during the permit process of WAC 173-351-700 to the jurisdictional health department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)).

(b) For the purposes of this subsection:

(i) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal

acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull, will exceed 0.10g in two hundred fifty years.

(ii) "Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety percent or greater probability that the acceleration will not be exceeded in two hundred fifty years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(7) Unstable areas.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF units will not be disrupted. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)). The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(i) On-site or local soil conditions that may result in significant differential settling;

(ii) On-site or local geologic or geomorphologic features; and

(iii) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this subsection:

(i) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, and areas susceptible to mass movements.

(ii) "Structural components" means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(iii) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a MSWLF unit.

(iv) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fuction, block sliding, and rock fall.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-140 Other location restrictions. (1) Groundwater.

((a)) ~~Liner separation. No new MSWLF unit or lateral expansion shall be located at a site where the bottom of the lowest liner is any less than ten feet (three meters) above the seasonal high level of groundwater in any water bearing unit which is horizontally and vertically extensive, hydraulically recharged and volumetrically significant as to harm or endanger the integrity of the liner at any time, unless a demonstration during the permit process of WAC 173-351-700 can be made that a hydraulic gradient control system or the equivalent can be installed to control groundwater fluctuations and maintain a five foot (1.5 meter) separation between the controlled seasonal high level of groundwater in the identified water bearing unit and the bottom of the lowest liner. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department. This demonstration must include:~~

((i)) ~~A hydrogeologic report required in WAC 173-351-490 including a discussion showing the effects from subsoil settlement, changes in surrounding land uses affecting groundwater levels, liner leakage or other impacts will not bring any hydrostratigraphic unit to within five feet (1.5 meters) of the bottom of the lowest liner during the active life, closure and post closure of the MSWLF unit;~~

((ii)) ~~Any currently available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;~~

((iii)) ~~A showing that any gradient control discharges to groundwater will not adversely impact existing groundwater/surface water users or the instream flow of surface waters in direct hydrologic contact or continuity with the landfill's hydraulic gradient control system;~~

((iv)) ~~Conceptual engineering drawings of the proposed MSWLF unit and discussion as to how the hydraulic gradient control system will not affect the structural integrity nor performance of the liner;~~

((v)) ~~Design specifications for the proposed ground and surface water monitoring systems; and~~

((vi)) ~~Preliminary engineering drawings of the hydraulic gradient control system (if applicable).~~

((b))) ((a)) ~~Sole source aquifers. (No) New MSWLF units ((or)) and lateral expansions ((shall)) may not be located over a designated sole source aquifer unless the owner or operator can demonstrate during the permit process of WAC 173-351-700 that the sole source aquifer is not vulnerable to potential groundwater contamination from the active area. Vulnerability is defined as the propensity or likelihood of a sole source aquifer to become contaminated should the integrity of the engineering control (including liners) fail; it is a measure of the propensity to deteriorate the water quality of a sole source aquifer, and takes into account an assessment of the physical barriers, the physical movement of contaminants, the hydraulic properties of the subsurface lithology; the rate of a contaminant plume movement; the physical and chemical characteristics of contaminants; and it also includes an assessment of the likelihood and ease for contaminant removal or~~

clean-up, or the arrest of contamination, so as to not impact any further portion of the designated sole source aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)). Such a vulnerability demonstration must include the submission of a hydrogeologic report as required in WAC 173-351-490 and additionally must meet the following performance criteria:

(i) Demonstrates the presence of confining units or other lithology that will prevent the migration of groundwater contamination;

(ii) Addresses the fate and transport of contaminants, including interactions in the lithologic framework, hydrogeochemical facies, contaminant travel times;

(iii) Defines and summarizes the groundwater budgets for the active area and the sole source aquifer including recharge and discharge areas and includes flow net diagrams;

(iv) Provides a contingency and groundwater assessment plan for the immediate arrest of any groundwater contamination and steps to assess the extent of contamination;

(v) Design specifications for the proposed ground and surface water monitoring systems;

(vi) Is prepared by a ((hydrogeologist or other professional groundwater scientist in accordance with WAC 173-351-400(2))) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists; and

(vii) "Sole source aquifer" means an aquifer designated by the Environmental Protection Agency pursuant to Section 1424e of the Safe Drinking Water Act (PL 93-523).

((e))) ((b)) ~~Drinking water supply wells. (No) New MSWLF units ((or)) and lateral expansions active area ((shall)) may not be located closer than one thousand feet (three hundred meters) to any drinking water supply well, in use and existing at the time of the purchase of the property containing the active area unless the owner or operator can demonstrate during the permit process of WAC 173-351-700 that the active area is no less than a ninety-day hydraulic travel time to the nearest down-gradient drinking water supply well in the first useable aquifer. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 ((and be issued a solid waste permit by the jurisdictional health department)). Such a demonstration must be prepared by a geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, and include:~~

(i) A hydrogeologic report required in WAC 173-351-490; and the necessary calculations for showing compliance with the ninety-day travel time; the ninety-day travel time ((shall)) must be based on the peak or full pumping capacity of installed nearby wells and include potentiometric surface maps showing well capture zones and radius of influence;

(ii) Any ((currently)) available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(iii) The waste management unit boundaries at facility closure; and

(iv) Design specifications for the proposed ground and surface water monitoring systems((, and

(v) A statement that the demonstration has been prepared by a hydrogeologist or qualified groundwater scientist in accordance with 173-351-400(2)).

(2) Surface water. ((No)) New MSWLF units ((or)) and lateral expansions active area ((shall)) may not be located in a channel migration zone or within two hundred feet (sixty-one meters) measured horizontally from the ordinary high water mark, of a shoreline of the state as defined in RCW 90.58.030 (which includes some wetlands associated with waters of the state), nor any public land that is being used by a public water system for watershed control for municipal drinking water purposes in accordance with WAC 246-290-450.

See also wetlands in WAC 173-351-130(4). Local wetlands protection ordinances should be consulted to determine if greater setbacks are required.

(3) Land use. ((No)) New MSWLF units ((or)) and lateral expansions ((shall)) may not be located:

(a) In areas designated by the United States Fish and Wildlife Service or the department of wildlife as critical habitat for endangered or threatened species of plants, fish, or wildlife;

(b) So that the active area is ((any)) closer than one hundred feet (thirty meters) to the facility property line for land zoned as nonresidential or ((for)) unzoned lands, ((except that the active area shall be no)) or closer than two hundred fifty feet (seventy-six meters) to the property line of adjacent land zoned as residential, existing at the time of the purchase of the property containing the active area(());

(c) So as to be at variance with any locally-adopted land use plan or zoning requirement unless otherwise provided by local law or ordinance; ((and)) or

(d) So that the active area is any closer than one thousand feet (three hundred meters) to any state or national park.

(4) ((Toxic air emissions. See WAC 173-351-200 (5)(a).

(5) Cover material. See WAC 173-351-200 (2)(a).

(6) Capacity. See WAC 173-351-010 (2)(e).

(7) Climatic factors. See WAC 173-351-300 (2)(b) for climatic factors.

(8) Natural soils. See WAC 173-351-300(2) for soil liner standards)) All landfill facilities must comply with the location restrictions specified in RCW 70.95.060.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-200 Operating criteria. (1) Procedures for excluding the receipt of ((dangerous)) prohibited waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of ((regulated dangerous)) prohibited wastes ((including polychlorinated biphenyls (PCB) waste as defined in chapter 173-303 WAC, the Dangerous waste regulations)). This program must include, at a minimum:

(i) Random inspections of incoming loads unless the owner or operator takes other steps (for example, instituting source controls and restricting the type of waste received) to ensure that incoming loads do not contain ((regulated dangerous)) prohibited waste ((or PCB wastes));

(ii) Records of any inspections;

(iii) Training of facility personnel to recognize ((regulated dangerous waste and PCB)) prohibited wastes; and

(iv) Immediate notification of the department and the jurisdictional health department if a ((regulated dangerous waste or PCB)) prohibited waste is discovered at the facility.

(b) For purposes of this subsection:

(i) "((Regulated dangerous)) Prohibited waste" means a solid waste that is:

(A) A dangerous waste as defined in WAC ((173-303-070, Designation of dangerous waste, including asbestos not managed in accordance to 40 CFR Part 61,)) 173-303-040 that is not excluded from regulation as a dangerous waste under WAC 173-303-071 or was not generated by an exempted small quantity generator as defined in WAC 173-303-070;

(B) Polychlorinated biphenyls (PCBs) regulated under Title 40 CFR Part 761, Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibition; and

(C) Asbestos not managed in accordance to 40 CFR Part 61.

(ii) "Random inspection" means:

(A) Discharging a random waste load onto a suitable surface. A suitable surface ((shall)) must be chosen to avoid interference with operations so that sorted waste can be distinguished from other loads of uninspected waste, so as to avoid litter and to contain runoff;

(B) Viewing the contents prior to actual disposal of the waste; and

(C) Allowing the facility owner or operator to return excluded wastes to the hauler, arrange for disposal of excluded wastes at a facility permitted to manage ((dangerous)) prohibited waste, or take other measures to prevent disposal of the excluded wastes at the facility.

(2) Cover material requirements.

(a) Except as provided in (b) of this subsection, the owners or operators of all MSWLF units must cover disposed solid waste with six inches (fifteen centimeters) of earthen material, i.e., soils, at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness other than at least six inches (15 centimeters) of earthen material may be approved by the jurisdictional health department ((if the)). The owner or operator must demonstrate(s) during the permit process of WAC 173-351-700 that the alternative material and thickness will not present a threat to human health or the environment; will not adversely affect gas or leachate composition or collection; will control disease vectors, fires, odors, blowing litter, and scavenging; and provide(s) adequate access for heavy vehicles((, will not adversely affect gas or leachate composition and controls and scavenging without presenting a threat to human health and the environment)).

(c) The jurisdictional health department may grant a temporary waiver not to exceed three months from the requirement of (a) and (b) of this subsection if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(3) Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this subsection, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

(4) Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(i) The concentration of methane gas generated by the facility does not exceed twenty-five percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components);

(ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary or beyond; and

(iii) The concentration of methane gases does not exceed one hundred parts per million by volume of methane in off-site structures.

(b) Owners or operators of all MSWLF units must control explosive gases and implement a routine methane monitoring program to ensure that the standards of (a)(i) and (ii) of this subsection are met.

(i) The explosive gas controls and type and frequency of monitoring must be determined based on the following factors:

(A) Soil conditions;

(B) The hydrogeologic conditions surrounding the facility;

(C) The hydraulic conditions surrounding the facility; (and)

(D) The location of facility structures and property boundaries; and

(E) The design and operation of the MSWLF unit.

(ii) The minimum frequency of monitoring ((shall)) must be quarterly.

Note: All gas monitoring wells ((shall)) must be constructed and decommissioned to ensure protection of the groundwater and to prevent groundwater contamination and follow the requirements of chapter 173-160 WAC, Minimum standards for construction and maintenance of wells, unless otherwise approved by the department and the jurisdictional health department.

(c) If methane gas levels exceeding the limits specified in subsection (4)(a)(i) or (ii) of this section are detected, the owner or operator must:

(i) Immediately take all necessary steps to ensure protection of human health including:

(A) Notifying the jurisdictional health department;

(B) Where subsection (4)(a)(ii) of this section is exceeded, monitoring of offsite structures for compliance with subsection (4)(a)(iii) of this section;

(C) Daily monitoring of methane gas levels unless otherwise authorized by the jurisdictional health department; and

(D) Evacuation of buildings affected by landfill gas ((shall)) must be determined by the jurisdictional health department and fire department.

(ii) Within seven calendar days of detection, place in the operating record, the methane gas levels detected and a description of the steps taken to protect human health; and

(iii) Within sixty days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the jurisdictional health department that the plan has been implemented. The plan ((shall)) must describe the nature and extent of the problem and the remedy.

(iv) The jurisdictional health department may establish alternative schedules for demonstrating compliance with (c)(ii) and (iii) of this subsection.

(d) For purposes of this subsection, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at twenty-five degrees C and atmospheric pressure.

(5) Air criteria.

(a) Owners or operators of all MSWLF units must ensure that the units not violate any applicable requirements developed under the Washington state implementation plan approved or promulgated by the ((Federal)) U.S. Environmental Protection Agency pursuant to Section 110 of the Federal Clean Air Act, as amended.

(b) Open burning of solid waste is prohibited at all MSWLF units, except: For the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees or debris from emergency cleanup operations, provided that such open burning is not inconsistent with policies, regulations, and permits administered by the jurisdictional air pollution control agency or the department under the Washington Clean Air Act, chapter 70.94 RCW. Household waste ((shall)) must not be open burned.

(6) Access requirements. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic, illegal dumping of wastes, and controls to keep animals out by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment. A lockable gate ((shall be)) is required at each entry to the facility.

(7) Run-on/runoff control systems.

(a) Except as allowed under WAC 173-351-710, owners or operators of all MSWLF units must design, construct, and maintain:

(i) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a twenty-five year storm;

(ii) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a twenty-four hour, twenty-five year storm.

(b) Runoff from the active portion of the landfill unit must be handled in accordance with WAC 173-351-200(8).

(8) Surface water requirements. MSWLF units ((shall)) must not:

(a) Cause a discharge of pollutants into waters of the state, including wetlands, that violates any requirements of chapter 90.48 RCW, Water pollution control, including, but not limited to, chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington, chapter 173-220 RCW, the National pollutant discharge elimination system permit program and chapter 173-216 WAC, State waste discharge permit program.

(b) Cause the discharge of a nonpoint source of pollution to waters of the state, including wetlands, that violates any

requirement of an area-wide or statewide water quality management plan that has been approved under Section 208 or 319 of the Federal Clean Water Act, as amended.

(9) Liquids restrictions.

(a) Except as allowed under WAC 173-351-710, bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

(i) The liquid waste is household waste other than septic waste; or

(ii) The liquid waste is leachate or gas condensate derived from the MSWLF unit~~((, or water added in a controlled fashion and necessary for enhancing decomposition of solid waste, as approved during the permitting process of WAC 173-351-700, whether it is a new or existing MSWLF, or lateral expansion and the MSWLF unit)) and:~~

(A) The MSWLF unit is designed with a leachate collection system and composite liner as described in WAC 173-351-300 ((2)(a)(i) and (ii) or (iii))(3); and

(B) ~~((Is accepting leachate, condensate or water resulting from an emergency in disposing of such liquids.)~~

~~The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700 and be issued a solid waste permit by the jurisdictional health department.) The owner or operator has obtained approval during the permitting process of WAC 173-351-700 prior to placing liquid waste in the MSWLF unit.~~

Note: Condensate and leachate are subject to designation to determine whether either is a dangerous waste under chapter 173-303 WAC.

(b) Containers holding liquid waste may not be placed in a MSWLF unit unless:

(i) The container is a small container similar in size to that normally found in household waste;

(ii) The container is designed to hold liquids for use other than storage; or

(iii) The waste is household waste.

(c) For purposes of this subsection:

(i) "Liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," SW-846.

(ii) "Gas condensate" means the liquid generated as a result of gas recovery processes at the MSWLF unit.

(10) Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain the required information as it becomes available. The operating record must be retained at or near the facility in an operating record or in an alternative location approved by the jurisdictional health department during the permitting process of WAC 173-351-700. The required information includes:

(i) Copies of all initial, renewal, reissued, and modified permit applications including all demonstrations, and issued permits;

(ii) Inspection records, training procedures, and notification procedures required in subsection (1) of this section, Procedures for excluding the receipt of ~~((hazardous)) prohibited~~ waste, and inspection documents associated with the plan of operation, WAC 173-351-210 ((1)(b))).

(iii) Gas monitoring results from monitoring and any remediation plans required by WAC 173-351-200(4);

(iv) Any demonstration, certification, declaration of construction, finding, monitoring, testing, or analytical data as required by WAC 173-351-400 (Groundwater monitoring systems and ~~((effective)) remedial~~ action);

(v) Major deviations from the plan of operation required in WAC 173-351-210; and

(vi) Daily records of weights or volumes of solid waste and, if available, types of waste received at the facility.

(b) The owner or operator must notify the jurisdictional health department when the documents from (a) of this subsection have been placed in or added to the operating record, unless:

(i) Such documents have been made a part of a permit application under this regulation;

(ii) Notification occurs under the renewal application requirements of WAC 173-351-730 (3)(b)(iv); or

(iii) The documents are daily records of weights or volumes specified in WAC 173-351-200 (10)(a)(vi).

(c) The jurisdictional health department can set alternative schedules during the permitting process of WAC 173-351-700 for recordkeeping and notification requirements as specified in (a) and (b) of this subsection, except for the notification requirements in WAC 173-351-130 (2)(b), the Federal Aviation Administration and in WAC 173-351-440 (6)(c), notification of land owners under assessment monitoring.

(d) All information contained in the operating record must be furnished upon request to the jurisdictional health department or be made available at all reasonable times for inspection by the jurisdictional health department and the department.

(11) Annual reports. Each owner or operator ~~((shall))~~ must prepare and submit a copy of an annual report to the jurisdictional health department and the department by April 1 of each year. The annual report ~~((shall))~~ must:

(a) Include information on facility activities during the previous year;

(b) Be on forms supplied by the department; and

(c) Include the following information:

(i) Facility location;

(ii) Facility contact;

(iii) Operational and/or post-closure information;

(iv) Permit status;

(v) Compliance information;

(vi) Facility capacity information;

(vii) Information on groundwater monitoring as required in WAC 173-351-415(1) ~~((except, prior to the effective date of the groundwater monitoring requirements of WAC 173-351-400, groundwater monitoring information and existing summaries collected under groundwater monitoring systems installed according to chapter 173-304 WAC))~~.

(viii) Information on violation of ambient standards for surface water and explosive gases whose monitoring is required by chapter 173-351 WAC or performed as part of the permit issued under WAC 173-351-700; ~~((and))~~

(ix) Financial assurance reviews and audit reports in accordance with WAC 173-351-600; and

(x) Other information as required.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-210 Plan of operation. Each owner or operator ((shall)) must develop, keep, and abide by a plan of operation approved as part of the permitting process in WAC 173-351-700. The plan of operation ((shall)) must describe the facilities' operation and ((shall)) must convey to site operating personnel the concept of operation intended by the designer. The plan of operation ((shall)) must be available for inspection at the request of the jurisdictional health ((officer)) department and the department. The facility must be operated in accordance with the plan of operation or the plan must be so modified with the approval of the jurisdictional health department.

Each plan of operation ((shall)) must include:

(1) How solid wastes are to be handled on-site during its active life including transportation, routine filling, grading, cover, and housekeeping;

(2) How inspections are conducted and their frequency;

(3) Actions to take if there is a fire or explosion;

(4) Actions to take for sudden releases (e.g., failure of run-off containment system);

(5) How equipment such as leachate collection and gas collection equipment are to be operated and maintained;

(6) A safety plan or procedure; ((and))

(7) How operators will meet each requirement of WAC 173-351-200 and 173-351-220; and

(8) Other such details as required by the jurisdictional health department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-220 Additional operating criteria. All owners or operators of MSWLF units ((shall)) must operate the facility so as to:

(1) Control road dust;

Note: Operators should carefully select dust suppressants approved by the jurisdictional health departments that do not pose a threat to surface or groundwater quality.

(2) Collect scattered litter as necessary to prevent vector harborage, a fire hazard, an aesthetic nuisance, or adversely affect wildlife or its habitat;

(3) Prohibit scavenging;

(4) Landfill personnel. All landfills ((shall)) must:

(a) Ensure that at least two landfill personnel are on-site with one person at the active portion when the site is open to the public for landfills with a permitted capacity of greater than fifty thousand cubic yards per year; and

(b) Comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities.

Note: The definition of operators in chapter 173-300 WAC is not the same as the definition of operator in this rule.

(5) Ensure that reserve operational equipment ((shall be)) is available to maintain and meet ((these standards)) all operating criteria;

(6) Clearly mark the active area boundaries authorized in the permit, with permanent posts or ((using)) equivalent method ((clearly visible for inspection purposes));

(7) Thoroughly compact the solid waste before succeeding layers are added except for the first lift over a liner;

(8) Maintain the monitoring system required in WAC 173-351-400, Groundwater monitoring systems and ((corrective)) remedial action, WAC 173-351-200(4), explosive gas monitoring of this regulation and any other monitoring specified in the permit issued in WAC 173-351-700(());

(9) Require recycling.

(a) All owners and operators ((shall)) must provide the opportunity for the general public to conveniently recycle cans, bottles, paper, and other material brought to the landfill site and for which a market exists or as required according to the most recently adopted county comprehensive solid waste management plan:

(i) During the normal hours of operation; and

(ii) In facilities convenient to the public (i.e., near entrance to the gate).

(b) Owners or operators ((shall)) must conduct recycling activities in an orderly, sanitary manner and in a way that does not interfere with MSWLF operations.

(c) Owners or operators may demonstrate during the permit process of WAC 173-351-700 alternative means to providing an opportunity to the general public to recycle household solid waste including other conveniently located facilities which offer recycling opportunities.

(10) Prohibiting disposal of municipal sewage sludge or biosolids in MSWLF units.

(a) The disposal of municipal sewage sludge or biosolids or any material containing municipal sewage sludge or biosolids in a MSWLF unit is prohibited unless the municipal sewage sludge or biosolids or material containing municipal sewage sludge or biosolids is not a liquid as defined in this rule, and such disposal is specifically approved as part of a valid NPDES permit, or a valid permit issued in accordance with chapter 70.95J RCW and rules promulgated under that authority.

(b) Notwithstanding WAC 173-351-220 (10)(a), the jurisdictional health department may allow disposal of municipal sewage sludge or biosolids, or any material containing municipal sewage sludge or biosolids in a landfill on a temporary basis if the jurisdictional health department determines that a potentially unhealthy circumstance exists and other management options are unavailable or would pose a threat to human health or the environment.

(c) In accordance with (b) of this subsection upon determination that a potentially unhealthy circumstance exists, the jurisdictional health department ((shall)) must notify the department in writing, of its findings and basis for its determination. In its notification, the jurisdictional health department ((shall)) must state the date on which disposal is approved to commence, any conditions, and the date after which continued disposal ((shall be)) is prohibited.

(d) For the purposes of this regulation, the use of sewage sludge or biosolids or any material containing sewage sludge or biosolids, which is subject to regulation under 40 CFR Part 503 and or chapter 70.95J RCW, as daily cover or as an amendment to daily cover ((shall be)) is considered disposal.

(11) Disposal of dangerous waste prohibited. Owners or operators of landfills ((shall)) must not knowingly dispose, treat, store, or otherwise handle dangerous waste unless the requirements of the Dangerous waste regulation, chapter 173-303 WAC are met(());

(12) Jurisdictional health department inspection of activities. In accordance with RCW 70.95.190, employees of the jurisdictional health department or their agents may enter upon, inspect, sample, and move freely about the premises of any MSWLF, after presentation of credentials.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-300 Design criteria. (1) Applicability. New MSWLF units and lateral expansions must be constructed in accordance with the requirements under subsection (2) of this section. Existing MSWLF units are not subject to this section. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management, including operating plans approved under chapter 173-304 WAC.

(2) New MSWLF units and lateral expansions ((shall)) must be constructed:

(a) ((For nonarid landfills, in accordance with a standard design as follows:

((i))) With a composite liner as defined in ((a)(ii))) subsection (3) of this ((subsection)) section and a leachate collection system that is designed and constructed to maintain less than a 1 foot (30 cm) depth of leachate over the liner(());

Note: Leachate head in leachate pump sump areas, only, shall not be allowed to exceed two feet (60 cm).

((ii))) and less than a 2-foot depth over the leachate pump sump area; or

(b) In accordance with an alternative design approved by the jurisdictional health department with the department's written consent. Alternative designs must ensure that the maximum contaminant levels listed in Table 1 of this section and the criteria in the water quality standards for groundwaters of the state of Washington, chapter 173-200 WAC, will not be exceeded in the hydrostratigraphic unit(s) identified in the hydrogeologic characterization/report at the relevant point of compliance as specified during the permitting process in WAC 173-351-700. Alternative designs must also sufficiently control methane to meet the criteria in WAC 173-351-200 (4)(a).

(3) For the purpose of this section, "composite liner" means a system consisting of two components; the upper component must consist of a minimum of 60 mil thickness high density polyethylene (HDPE) geomembrane. The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component. Thinner geomembranes of other than high density polyethylene may be used provided that a demonstration can be made that the alternative has equivalent mechanical strength, permeability, chemical resistance and other factors under conditions of construction and use. Minimum thickness of

geomembranes other than high density polyethylene ((shall)) must be 30 mils.

((iii)) Equivalent liner designs and liner materials may be used provided a demonstration during the permitting process of WAC 173-351-700 can be made that the liner is equivalent to the composite liner design:

(A) With respect to hydraulic effectiveness as shown by the use of the hydraulic evaluation of landfill performance (HELP) model or other approved models or methods;

(B) With respect to mechanical strength;

(C) With respect to chemical resistance;

(D) With respect to potential physical damage during construction and operation;

(E) With respect to attenuative capacity; and

(F) And other factors identified by the jurisdictional health department and the department on a case-by-case basis:

(b) For arid landfills, in accordance with a design that ensures that the maximum contaminant levels listed in Table 1 of this section will not be exceeded in the hydrostratigraphic unit(s) identified in the hydrogeologic characterization/report at the relevant point of compliance as specified during the permitting process in WAC 173-351-700. When approving a design that complies with the arid landfill design of (b) of this subsection, the jurisdictional health department shall consider at least the following factors:

(i) The hydrogeologic characteristics of the facility and surrounding land;

(ii) The climatic factors of the area; and

((iii)) The volume, physical and chemical characteristics of the leachate.

Note: When determining the need for a liner in arid settings and its ability to meet the performance standard of this section, considering (b)(i), (ii), and (iii) of this subsection, the owner or operator may use:

((A))) (4) When demonstrating that a proposed alternative design meets the standards of this section, the owner or operator may use:

(a) Existing information such as vadose zone, groundwater monitoring, or leachate characterization that has previously been conducted at the facility;

((B))) (b) Contaminant transport modeling in accordance with the requirements of WAC 173-351-480; and/or

((C))) (c) Other information determined as appropriate and relevant by the jurisdictional health department.

((E))) (5) When approving an alternative design, the jurisdictional health department must consider at least the following factors:

(a) The hydrogeologic characteristics of the facility and surrounding land;

(b) The climatic factors of the area; and

((c)) The volume, physical and chemical characteristics of the leachate.

(6) The relevant point of compliance approved during the permitting process in WAC 173-351-700, ((shall)) must be no more than one hundred fifty meters (four hundred ninety-two feet) from the waste management unit boundary and ((shall)) must be located on land owned by the owner of the MSWLF unit. In approving the relevant point of compliance the jurisdictional health department ((shall)) must consider at least the following factors:

((i))) (a) The hydrogeologic characteristics of the facility and surrounding land;

((ii))) (b) The volume, and physical/chemical characteristics of the leachate;

((iii))) (c) The quantity and quality, and direction((5)) of flow of groundwater;

((iv))) (d) The proximity and withdrawal rate of the groundwater users;

((v))) (e) The availability of alternative drinking water supplies;

((vi))) (f) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or reasonably expected to be used for drinking water;

((vii))) (g) Public health, safety, and welfare effects; and

((viii))) (h) Practical capability of the owner or operator.

(7) Liner separation from groundwater. New MSWLF units and lateral expansions may not be designed such that the bottom of the lowest liner component is any less than ten feet (three meters) above the seasonal high level of groundwater, unless a demonstration can be made during the permit process of WAC 173-351-700 that a hydraulic gradient control system, or the equivalent, can be installed which prevents the controlled seasonal high level of groundwater in the identified water-bearing unit from contacting the bottom of the lowest liner component. For the purposes of this section, groundwater includes any water-bearing unit that is horizontally and vertically extensive, hydraulically recharged and volumetrically significant as to harm or endanger the integrity of the liner at any time. The owner or operator must place the demonstration in the application for a permit under WAC 173-351-700. This demonstration must include:

(a) A hydrogeologic report required in WAC 173-351-490 including a discussion showing the effects from subsoil settlement, changes in surrounding land uses affecting groundwater levels, liner leakage or other impacts will not bring any hydrostratigraphic unit in contact with the bottom of the lowest liner during the active life, closure, post-closure, and upon completion of post-closure care of the MSWLF unit;

(b) Any available ground/surface water quality data for aquifers, springs, or streams in direct hydrologic contact with landfill's active area;

(c) A showing that any gradient-control discharges to groundwater will not adversely impact existing groundwater/surface water users or the instream flow of surface waters in direct hydrologic contact or continuity with the landfill's hydraulic gradient control system;

(d) Conceptual engineering drawings of the proposed MSWLF unit and discussion as to how the hydraulic gradient control system will not affect the structural integrity nor performance of the liner during the active life, closure, post-closure, and upon completion of post-closure care of the MSWLF unit;

(e) Design specifications for the proposed ground and surface water monitoring systems;

(f) A discussion of the potential impacts from the gradient control system on the capability of collecting groundwa-

ter samples that represent the quality of groundwater passing the relevant point of compliance; and

(g) Preliminary engineering drawings of the hydraulic gradient control system.

TABLE 1

CHEMICAL	Maximum Contaminant (Levels (MCL)) Concentration (mg/l)(4)
ARSENIC	0.00005
BARIUM	1.0
BENZENE	0.001
CADMIUM	((0.04)) 0.005
CARBON TETRACHLORIDE	0.0003
CHROMIUM (HEXAVALENT)	0.05
2,4-DICHLOROPHOXY ACETIC ACID	((0.4)) 0.07
1,4-DICHLOROBENZENE	0.004
1,2-DICHLOROETHANE	0.0005
1,1 DICHLOROETHYLENE	0.007
ENDRIN	0.0002
FLUORIDE	4
LINDANE	0.00006
LEAD	((0.05)) 0.015
MERCURY	0.002
METHOXYCHLOR	((0.1)) 0.04
NITRATE	10
SELENIUM	0.01
SILVER	0.05
TOXAPHENE	0.00008
1,1,1-TRICHLOROETHANE	0.20
TRICHLOROETHYLENE	0.003
2,4,5-TRICHLOROPHOXY ACETIC ACID	0.01
VINYL CHLORIDE	0.00002

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-400 Groundwater monitoring systems and ((corrective)) remedial action. (1) Applicability.

(a) The requirements of WAC 173-351-400 through WAC 173-351-490 apply to MSWLF units whose owners and operators are required to perform groundwater monitoring under chapter 173-351 WAC.

(b) Owners and operators of MSWLF units must comply with the groundwater monitoring requirements of this regulation according to the following schedule:

(i) Existing MSWLF units and lateral expansions less than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1994;

Note: A drinking water intake is any surface water or groundwater intake that is used for the purposes of drinking water i.e., water supply wells.

(ii) Existing MSWLF units and lateral expansions greater than one mile (1.6 kilometers) from a drinking water intake (surface or subsurface) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 by October 9, 1995;

(iii) New MSWLF units and lateral expansions ((units)) must be in compliance with the groundwater monitoring requirements specified in WAC 173-351-400 through 173-351-450, and 173-351-490 before waste can be placed in the MSWLF unit.

(c) Existing MSWLF units and lateral expansions with groundwater contamination as defined under WAC 173-304-100 and chapter 173-200 WAC must begin an assessment groundwater monitoring program under WAC 173-351-440 by October 9, 1994.

(d) Interim groundwater monitoring programs. Prior to the compliance schedules in (b) of this subsection, all existing MSWLF units and lateral expansions must either:

- (i) Continue to monitor under WAC 173-304-490; or
- (ii) Begin to monitor under this section.

(e) All MSWLF units closed in accordance with chapter 173-304 WAC must continue to monitor groundwater in accordance with chapter 173-304 WAC.

(2) ((Personnel qualifications. For the purposes of this regulation, a "qualified groundwater scientist" must be a hydrogeologist, geologist, engineer, or other scientist who meets all of the following criteria:

(a) Has received a baccalaureate or post graduate degree in the natural sciences or engineering; and

(b) Has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(3) A qualified groundwater scientist is required to prepare)) The following reports, demonstrations and information must be prepared by a geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists:

(a) The hydrogeologic report(s) of WAC 173-351-490;

(b) The groundwater monitoring program(s) including the groundwater monitoring system design and well placement of WAC 173-351-405; the groundwater sampling and analysis plan of WAC 173-351-410; the detection monitoring program(s) of WAC 173-351-430; and the assessment monitoring program(s) of WAC 173-351-440;

(c) Any demonstration(s) under WAC 173-351-430

(4)(c) ((or)), 173-351-440 (6)(e), ((or)) 173-351-140(1), or 173-351-300(7);

(d) Any modification(s) proposals/requests to the approved groundwater monitoring program in accordance with WAC 173-351-450; ((and))

(e) Any groundwater modeling demonstrations made under WAC 173-351-480; and

(f) The groundwater reports required under WAC 173-351-415.

Note: ((A hydrogeologist or other qualified groundwater scientist is NOT required for the actual groundwater sampling.)) Groundwater sampling must be performed by or under the direct supervision of a geologist or other licensed professional in accordance with chapter 18.220 RCW, Geologists.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-405 Performance standards for groundwater monitoring system designs. Groundwater monitoring well placement.

The groundwater monitoring system design ((shall)) must meet the following performance criteria:

(1) A sufficient number of wells must be installed at appropriate locations and depths to yield representative groundwater samples from those hydrostratigraphic units which have been identified as the earliest target hydraulic pathways and conduits of flow for groundwater and contaminant movement, and storage.

(2) The number, spacing, and depths of monitoring wells must be based on the site characteristics including the area of the MSWLF unit and the hydrogeological characterization of WAC 173-351-490, and requires a demonstration based on all of the following information:

(a) A groundwater flow path analysis which supports why the chosen hydrostratigraphic unit best serves the installation of a detection or assessment groundwater monitoring well system capable of providing early warning detection of any groundwater contamination.

(b) Documentation and calculations of all of the following information:

(i) Hydrostratigraphic unit thicknesses including confining units and transmissive units;

(ii) Vertical and horizontal groundwater flow directions including seasonal, man-made, or other short term fluctuations in groundwater flow;

(iii) Stratigraphy and lithology;

(iv) Hydraulic conductivity; and

(v) Porosity and effective porosity.

(3) Hydraulically placed upgradient wells (background wells) must meet the following performance criteria:

(a) Must be installed in groundwater that has not been affected by leakage from a MSWLF unit; or

(b) If hydrogeologic conditions do not allow for the determination of a hydraulically placed upgradient well then sampling at other monitoring wells which provide representative background groundwater quality may be allowed((; and)).

(4) Hydraulically placed down-gradient wells (compliance wells) must meet the following performance criteria:

(a) Represent the quality of groundwater passing the relevant point of compliance specified by the jurisdictional health department. The downgradient monitoring system must be installed at the relevant point of compliance specified by the jurisdictional health department during the permitting process of WAC 173-351-700. Additional wells may be required by the jurisdictional health department based upon areal extent of the MSWLF unit, complex hydrogeo-

logic settings or to define the extent of contamination under WAC 173-351-440 and 173-351-450.

(b) When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance hydraulically down gradient from the relevant point of compliance that ensures detection of groundwater contamination in the chosen hydrostratigraphic unit.

(5) All monitoring wells must be cased in a manner that maintains the integrity of the bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of samples. The annular space between the bore hole and well casing above the sampling depth must be sealed to prevent ((contamination)) corruption of samples and contamination of groundwater. All wells must be constructed in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of water wells and chapter 173-162 WAC, Regulation and licensing of well contractors and operators. All wells must be clearly labeled, capped, and locked.

(6) The owner or operator must apply for a permit modification under WAC 173-351-720((§)) (6) or must apply during the renewal process of WAC 173-351-720 ((+)(+)) (5), for any proposed changes to the design, installation, development, and decommissioning of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices. Upon completing changes, all documentation, including date of change, new well location maps, boring logs, and well diagrams must be submitted to the jurisdictional health department and must be placed in the operating record of WAC 173-351-200(10).

(7) All monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(8) The groundwater monitoring system and hydrogeologic report including any changes to the groundwater monitoring system ((shall)) must be prepared by a ((hydrogeologist or other qualified groundwater scientist and include a statement of personnel qualifications)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists.

(9) The ((prepared)) groundwater monitoring system design and hydrogeologic report must be made a part of the permit application in accordance with WAC 173-351-730 (1)(b)(iii).

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-410 Groundwater sampling and analysis requirements. (1) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with WAC 173-351-400 and with this section. The owner or operator must submit the sampling and analysis program documentation as a part of the permit application in accordance

with WAC 173-351-730 (1)(b)(iii). The program must include procedures and techniques for:

- (a) Sample collection and handling;
- (b) Sample preservation and shipment;
- (c) Analytical procedures;
- (d) Chain-of-custody control;
- (e) Quality assurance and quality control;
- (f) ((Decontamination)) Cleansing of drilling and sampling equipment;
- (g) Procedures to ensure employee health and safety during well installation and monitoring; and
- (h) Well operation and maintenance procedures.

(2) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples or reflect an acceptable practical quantitation limit (PQL). Groundwater samples ((shall)) must not be field-filtered ((for organic constituents)) prior to laboratory analysis. All analyses must be sent to an accredited laboratory in accordance with chapter 173-50 WAC, Accreditation of environmental laboratories.

(3) Groundwater elevations must be measured in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same MSWLF unit must be measured within a period of time short enough to avoid any groundwater fluctuations which could preclude the accurate determination of groundwater flow rate and direction. All groundwater elevations must be determined:

(a) By a method that ensures measurement to the 0.01 (one/hundredth) of a foot (3mm) relative to the top of the well casing; and

(b) The orthometric elevation of the top of the well casing is related to a vertical benchmark based on the ((national geodetic)) North American vertical datum of (1929 (NGVD 29)) 1988 (NAVD88) and be established to 3rd order classification standards per federal geodetic control committee((; or its successor, as specified in WAC 332-130-060)).

(4) The owner or operator must establish background groundwater quality in hydraulically placed upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under ((this section)) WAC 173-351-430, 173-351-440, or 173-351-450. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of WAC 173-351-400 through 173-351-490.

(5) The number of samples collected to establish water quality data must be consistent with the appropriate statistical procedures determined pursuant to WAC 173-351-420. The sampling procedures ((shall)) must be those specified under WAC 173-351-430 for detection monitoring, WAC 173-351-440 for assessment monitoring, and WAC 173-351-440(6) ((or corrective)) for remedial action.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-415 Groundwater reporting. (1) ((The annual report shall be included with the facility annual report as required in WAC 173-351-200(11) and shall be on)) Each owner or operator must prepare and submit a copy of an annual groundwater report to the jurisdictional health department and the department by April 1st of each year. The groundwater annual report must include completed forms developed by the department ((which will request)) and the following information:

(a) A brief summary of statistical results and/or any statistical trends including any findings of any statistical increases for the year;

(b) A brief summary of groundwater flow rate and direction for the year, noting any trends or changes;

(c) A ((Xerox)) copy of all potentiometric surface maps developed for each quarter or approved semi-annual period; and

(d) A summary geochemical evaluation noting any changes or trends in the cation-anion balances, Trilinear diagrams and general water chemistry for each well.

(2) A quarterly, or alternate frequency approved in accordance with WAC 173-351-450, groundwater report ((shall)) must be submitted to the jurisdictional health department and the department no later than sixty days after the receipt of the ((quarterly)) analytical data ((and shall)). The groundwater report must include completed forms developed by the department and all of the following:

(a) All groundwater monitoring data for the sampling period;

(b) A brief summary of statistical results and/or any statistical trends and all statistical calculations ((and summaries));

(c) Notification of any statistical increase and concentrations above ((MCL's)) the criteria in chapter 173-200 WAC, Water quality standards for groundwaters of the state of Washington;

(d) Static water level readings for each monitoring well for each sampling event;

(e) Potentiometric surface elevation maps depicting groundwater flow rate and direction;

(f) Cation-anion balances and Trilinear diagrams; and

(g) Leachate ((analyses)) analysis results if sampled and tested.

(3) All groundwater monitoring data must be submitted consistent with procedures specified by the department. Unless otherwise specified by the department, all groundwater monitoring data must be submitted in both printed form and an electronic form capable of being transferred into readily available statistical software and the department's data management system.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-420 Statistical methods for groundwater monitoring. (1) The owner or operator must calculate and evaluate all of the following statistics ((using)) for background groundwater quality data:

- (a) The background mean;
- (b) The background variance;
- (c) The standard deviation of the background data;
- (d) The coefficient of variation of the background data;
- (e) The standard error of the background data; and
- (f) Other statistics testing for homogeneity of variance and the normality of the background data.

(2) The owner or operator must specify in the permit application in accordance with WAC 173-351-730 (1)(b)(iii) ((one of the following)) appropriate statistical methods to be used in evaluating groundwater monitoring data for each ((hazardous)) constituent. The statistical test chosen ((shall)) must be conducted separately for each ((hazardous)) constituent in each well. ((The statistical methods to be used are:))

((a) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;))

((b) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;))

((c) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;))

((d) A control chart approach that gives control limits for each constituent; or))

((e) Another statistical test method that meets the performance standards of this section. The owner or operator must place a justification for this alternative in the permit application in accordance with WAC 173-351-730 (1)(b)(iii). The justification must demonstrate that the alternative method meets the performance standards of this section.))

(3) Any statistical method chosen under this section shall comply with)) The owner or operator must demonstrate that the statistical methods meet the following performance standards, as appropriate:

(a) The statistical method used to evaluate groundwater monitoring data ((shall)) must be appropriate for the distribution of chemical parameters or ((hazardous)) constituents. If the distribution of the chemical parameters or ((hazardous)) constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data must be evaluated to determine if nonnormal conditions are due to laboratory or sampling error, poor well construction, seasonal or spatial variability, or actual site conditions. Transformed or a distribution-free theory test may be used, upon a determination of why nonnormal conditions exist. If the distributions for the constituents differ, more than one statistical method may be needed.

(b) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test ((shall)) must be

done at a Type I error level no less than 0.01 for each testing period. If a multiple comparison procedure is used, the Type I experiment wise error rate for each testing period ((shall)) must be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(c) ((If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated)) Parameter values ((shall)) must be protective of human health and the environment. The parameters ((shall)) must be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(d) ((If a tolerance interval or a predicational interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.))

((e))) The statistical method ((shall)) must account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (PQL) that is used in the statistical method ((shall)) must be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

((f))) (e) If necessary, the statistical method ((shall)) must include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

((4))) (3) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit after each sampling event and as determined under this section.

(a) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to WAC 173-351-430 or 173-351-440 to the background value of that constituent, according to the statistical procedures and performance standards specified under this section.

(b) Within thirty days after receipt of the analytical data, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well ((at all hydraulically placed upgradient and downgradient wells)).

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-430 Detection monitoring program.

(1) Detection monitoring ((is required)) must be conducted at MSWLF units at all groundwater monitoring wells ((defined)) required under WAC 173-351-405. At a mini-

mum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I and II of this regulation.

(2) Background data development.

(a) A minimum of eight independent samples ((shall)) must be collected for each well ((background and downgradient)) and must be collected and analyzed for the Appendix I constituents for the first year of groundwater monitoring.

(b) Each independent sampling event ((shall)) must be no less than one month apart from the previous independent sampling event.

(c) Sampling for Appendix II parameters ((shall)) must be done quarterly.

(d) MSWLF units which have previously developed background data for those constituents listed in Appendix I will be waived from (a) of this subsection on a parameter by parameter basis providing all performance criteria of WAC 173-351-400 are met.

(3) ((Foreground data development)) Routine sampling.

The monitoring frequency for all constituents listed in Appendix I and II ((shall)) must be quarterly in each well during the active life of the MSWLF unit including closure and the post-closure period and begins after the first year of background data development((, for all monitoring wells (upgradient and downgradient))).

((Note: Foreground denotes the period of time following the development of the background data set, for all monitoring wells (upgradient and downgradient).))

(4) If the owner or operator determines, pursuant to WAC 173-351-420, that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I, at any monitoring well at the boundary specified under WAC 173-351-405, the owner or operator:

(a) Must, within fourteen days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and send the same notice to the jurisdictional health department and the department; and

(b) Must establish an assessment monitoring program meeting the requirements of WAC-173-351-440 within ninety days except as provided for in (c) of this subsection; or

(c) May demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be prepared by a ((hydrogeologist or other qualified groundwater scientist)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, and approved by the jurisdictional health department and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after ninety days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in WAC 173-351-440((, and

(d) Must submit the assessment monitoring program to the jurisdictional health department at the end of ninety days as provided in (b) of this subsection)).

(5) A geochemical evaluation of Appendix II parameters ((~~shall~~) must) be conducted at each well on a quarterly basis and include all of the following methods:

(a) A cation-anion balance evaluating the difference between the cation and anion sums expressed in milliequivalents per liter((, if a greater than a five to ten percent difference occurs then)). If the following threshold limits are exceeded, the owner or operator ((~~shall~~) must) provide a summary explanation and examine whether the difference is due to a laboratory error, poor well conditions, or other ions not accounted for in natural or impacted groundwater conditions((,)). A ten percent difference threshold is used if the total cation-anion sums are less than 5.0 meq/liter ((then a ten percent difference threshold may be used)). A five percent difference threshold is used if the total cation-anion sums are greater than or equal to 5.0 meq/liter.

(b) A plot of cations and anions for each well on a trilinear diagram, as recommended in hydrogeologic texts and/or the department guidance documents.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-440 Assessment monitoring program.

(1) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the Appendix I or in the alternative list approved in accordance with WAC 173-351-450, Alternative groundwater monitoring programs.

(2) Within ninety days of triggering ((~~into~~)) an assessment monitoring program, and ((~~quarterly~~)) annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix III ((of this part)). A minimum of one sample from each ((downgradient)) well (background and downgradient) must be collected and analyzed during each sampling event. For any constituent detected in ((the downgradient)) wells as a result of the complete Appendix III analysis, a minimum of four independent samples must be collected from each well (background and downgradient) ((must be collected)) within a time period of one hundred eighty days, and analyzed to establish background for the constituents. Each independent sample ((~~shall~~) must) be collected no less than one month apart from the previous sampling event.

(3) After obtaining the results from ((the)) initial or subsequent sampling events required in subsection (2) of this section, the owner or operator must:

(a) Within fourteen days, notify the jurisdictional health department of the increase, identifying the Appendix III constituent(s) that have been detected and place this notice in the operating record;

(b) Within ninety days, and on a quarterly basis thereafter, resample all wells, conduct analyses for all constituents in Appendix I and II((,)) and((, for these)) constituents in Appendix III that are detected in response to subsection (2) of this section((,)). Record their concentrations in the facility operating record and notify the jurisdictional health department. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events;

(c) Establish background concentrations for any constituents detected pursuant to subsection (2) of this section;

(d) Establish groundwater protection standards for all constituents detected pursuant to subsection (2) or (3) of this section. The groundwater protection standards ((~~shall~~) must) be established in accordance with subsection (7) of this section; and

(e) Continue performing geochemical evaluations in accordance with WAC 173-351-430(5) on a quarterly basis.

(4) If the concentrations of all Appendix III constituents are shown to be at or below background values, using the statistical procedures in WAC 173-351-420, for two consecutive sampling events, ((and before returning to detection monitoring)) the owner or operator ((~~must~~) may return to detection monitoring after:

(a) ((Notify)) Notifying the jurisdictional health department of this finding;

(b) ((Receive)) Receiving approval in writing from the jurisdictional health department; and

(c) ((Place)) Placing the notice and the approval in (a) and (b) of this subsection in the operating record ((~~of WAC 173-351-200(10)~~)).

(5) If the concentrations of any Appendix III constituents are above background values, but all concentrations are below the groundwater protection standard established under subsection (7) of this section, using the statistical procedures in WAC 173-351-420, the owner or operator must continue assessment monitoring in accordance with this section.

(6) If one or more Appendix III constituents are detected at statistically significant levels above the groundwater protection standard established under subsection (7) of this section in any sampling event, the owner or operator must, within fourteen days of this finding, notify the jurisdictional health department, the department and all appropriate local government officials of the increase and place a notice in the operating record identifying the Appendix III constituents that have exceeded the groundwater protection standard. The owner or operator also:

(a) Must characterize the chemical composition of the release, the contaminant fate and transport characteristics; the rate and extent of contamination in all groundwater flow paths by installing additional monitoring wells as necessary;

(b) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subsection (2) of this section;

(c) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated offsite if indicated by sampling of wells in accordance with subsection (6) of this section; and

(d) Must initiate an assessment, selection, and implementation of ((~~corrective measures as required by~~)) remedial actions in accordance with chapter 173-340 WAC, the Model Toxics Control Act regulation and continue monitoring in accordance with the assessment monitoring program pursuant to this section; or

(e) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the statistically significant increase resulted from error in sampling, analysis, statis-

tical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be prepared by a ((hydrogeologist or other qualified groundwater scientist and)) geologist or other licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, approved by the jurisdictional health department, and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to this section, and may return to detection monitoring if the Appendix III constituents are at or below background as specified in subsection (4) of this section. Until a successful demonstration is made, the owner or operator must comply with this subsection (6) including initiating an assessment of ((corrective measures)) remedial actions.

(7) The owner or operator:

(a) Must establish a groundwater protection standard using the groundwater quality criteria of chapter 173-200 WAC; and

(b) For constituents for which the background level is higher than the protection standard identified under (a) of this subsection, must use the background concentration for the constituents established from wells in accordance with WAC 173-351-405 through 173-351-430.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-450 Alternate groundwater monitoring programs. (1) The owner or operator may propose changes and/or alternate groundwater monitoring programs for detection monitoring after the second year of groundwater monitoring under WAC 173-351-430, or the assessment monitoring program of WAC 173-351-440 as follows:

(a) An alternate groundwater monitoring frequency for sampling and analysis of Appendix I and II constituents ((~~of no less than semiannual monitoring~~));

(b) A deletion of Appendix I, II, and III constituents or alternate groundwater monitoring constituents ((~~for Appendix I, II and III~~));

(c) An appropriate subset of wells to be sampled and analyzed for Appendix III under WAC 173-351-440(2).

(2) All proposed changes in groundwater monitoring frequency must be no less than semiannually for detection ((groundwater)) monitoring and no less than quarterly for assessment monitoring. The owner or operator must apply for a permit modification under WAC 173-351-720((~~of~~))) (6) or must apply during the renewal process of WAC 173-351-720 ((~~of~~))) (5) for changes in groundwater monitoring frequency making a demonstration based on the following information:

(a) A characterization of the hydrostratigraphic unit(s) including the unsaturated zone, transmissive and confining units and include all of the following:

- (i) Hydraulic conductivity; and
- (ii) Groundwater flow rates.

(b) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring wells (minimum distance of travel); and

- (c) Contaminant fate and transport characteristics.

(3) The owner or operator must apply for a permit modification under WAC 173-351-720((~~of~~))) (6) or must apply during the renewal process of WAC 173-351-720 ((~~of~~))) (5) for all proposed deletions or changes to groundwater monitoring constituents of Appendix I, II, and III based on all of the following information:

Verification that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit, by:

(a) Leachate monitoring results consisting of those parameters listed in Appendix ((IV-)) I and II for deletions or changes to detection monitoring and Appendix III for assessment monitoring. All leachate monitoring ((shall)) must be quarterly unless otherwise approved by the jurisdictional health department and the department;

(b) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(c) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(d) The detectability of indicator parameters, waste constituents, and reaction products in the groundwater; and

(e) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(4) Multitunit groundwater monitoring systems.

An owner or operator may propose during the permitting process of WAC 173-351-700 a multiunit groundwater monitoring system instead of separate groundwater monitoring systems for each MSWLF unit, including MSWLF units which were closed in accordance with chapter 173-351, 173-304, or 173-301 WAC ((when the facility has several MSWLF units, provided)). The multiunit system must meet((s)) all of the requirements of WAC 173-351-400 through WAC 173-351-490 and will be as protective of human health and environment as individual groundwater monitoring systems for each MSWLF unit. Permit approval for multiunit groundwater monitoring systems and programs will be based on the ability to provide early warning detection of any contaminant releases including:

(a) Number, spacing, and orientation of the MSWLF units;

(b) Hydrogeologic setting;

(c) Site history;

(d) Engineering design of the MSWLF units;

(e) Type of waste accepted at the MSWLF units; and

(f) Leachate analysis as referenced in subsection (3)(a) of this section for MSWLF units with leachate collection systems.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-460 Role of jurisdictional health department in ((corrective)) remedial action. The jurisdictional health department:

(1) May ((participate)) provide input to the department in ((all)) negotiations, meetings, and correspondence between the ((owner and operator)) potentially liable person(s) and the

department in implementing the Model Toxics Control ((~~action~~) Act, chapter 70.105D RCW;

(2) May comment upon and participate in all decisions made by the department in assessing, choosing, and implementing a ((~~corrective~~) remedial) action program;

(3) ((~~shall~~) Must) require the owner or operator to continue closure and post-closure activities as appropriate under these rules, after ((~~corrective~~) remedial) action measures are completed; and

(4) ((~~shall~~) Must) continue to regulate all MSWLF units during construction, operation, closure and post-closure, that are not ((~~directly impacted by Model Toxics Control Act~~)) exempt from procedural requirements under chapter 70.105D RCW.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-465 Role of department of ecology in ((~~corrective~~) remedial) action. The department ((~~shall~~) will) carry out all the responsibilities assigned to it under the Model Toxics Control Act (MTCA), chapter 70.105D RCW, during the ((~~corrective~~) remedial) action process.

((Note: Ecology encourages and will support owners or operators who perform independent corrective action(s) consistent with MTCA.))

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-480 Groundwater modeling. All groundwater and contaminant fate and transport modeling must meet the following performance standards:

(1) The model ((~~shall~~) must) have supporting documentation that establishes its ability to represent groundwater flow and contaminant transport and any history of previous applications;

(2) The set of equations representing groundwater movement and contaminant transport must be theoretically sound and well documented;

(3) The numerical solution methods must be based upon sound mathematical principles and be supported by verification and checking techniques;

(4) The model must be calibrated and verified against site-specific field data;

(5) A sensitivity analysis ((~~shall~~) must) be conducted to measure the model's responses to changes in the values assigned to major parameters, specified tolerances, and numerically assigned space and time discretizations;

(6) Mass balance calculations on selected elements in the model ((~~shall~~) must) be performed to verify physical validity. Where the model does not prescribe the amount of mass entering the system as a boundary condition, this step may be ignored;

(7) The values of the model's parameters requiring site specific data ((~~shall~~) must) be based upon actual field or laboratory measurements; and

(8) The values of the model's parameters which do not require site specific data ((~~shall~~) must) be supported by laboratory test results or equivalent methods documenting the validity of the chosen parameter values.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-490 The hydrogeologic report contents. (1) The hydrogeologic report ((~~shall~~) must) meet all of the following performance standards as follows:

(a) Examine existing site conditions for compliance with groundwater and surface water location restrictions under WAC 173-351-130 ((~~and~~)), 173-351-140, and 173-351-300(7);

(b) Determine existing or background groundwater quality conditions, including any groundwater contamination; and

(c) Define a detection groundwater monitoring program capable of immediate and early warning detection for potential contamination as required in WAC 173-351-400 and the information required in subsection (2) of this section.

(2) The hydrogeologic report contents ((~~shall~~) must) include the following information:

(a) A summary of local and regional geology and hydrology, including faults, zones of joint concentrations, unstable slopes and subsidence areas on site; areas of groundwater recharge and discharge; stratigraphy; erosional and depositional environments and facies interpretation(s);

(b) A borehole program which identifies all performance criteria of WAC 173-351-405 including lithology, soil/bedrock types and properties, preferential groundwater flow paths or zones of higher hydraulic conductivity, the presence of confining unit(s) and geologic features such as fault zones, cross-cutting structures etc., and the target hydrostratigraphic unit(s) to be monitored. The borehole program must meet the following standards:

(i) A minimum of twenty subsurface borings is required for MSWLF sites which are 50 acres or less in aerial extent. For sites greater than fifty acres, twenty borings, plus three borings for each additional ten acres thereafter, is required. Soil borings ((~~shall~~) must) be established in a grid pattern with a boring in each major geomorphic feature such as topographic divides and lowlands;

(ii) Each boring will be of sufficient depth below the proposed grade of the bottom liner as to identify soil, bedrock and hydrostratigraphic unit(s) conditions as required in WAC 173-351-405((-));

(iii) The jurisdictional health department ((~~and~~), with the written concurrence of the department, may approve alternate methods including geophysical techniques, either surface or downhole including electric logging, ((~~some~~)) sonic logging, nuclear logging, seismic profiling, electromagnetic profiling and resistivity profiling in lieu of some of the number of borings required in the subsurface borehole program of (b)(i) of this subsection, provided sufficient hydrogeological site characterization can be accomplished and prior approval is obtained((-));

(iv) ((~~At~~)) Each boring sample((~~s~~-~~shall~~) must) be collected from each lithologic unit and tested for all of the following:

(A) Particle size distribution by both sieve and hydrometer analyses in accordance with approved ASTM methods (D422 and D1120);

(B) Atterburg limits following approved ASTM methods (D4318); and

(C) Classification under the unified soil classification system, following ASTM standard D2487-85.

((v))) (v) Each lithologic unit on site will be analyzed for:

(A) Moisture content, following approved ASTM methods (D2216); and

(B) Hydraulic conductivity by an in-situ field method or laboratory method approved by the jurisdictional health department and the department. All samples collected for the determination of permeability ((shall)) must be collected by standard ASTM procedures.

((v))) (vi) All boring logs ((shall)) must be submitted with the following information:

(A) Soil and rock descriptions and classifications;

(B) Method of sampling;

(C) Sample depth;

(D) Date of boring;

(E) Water level measurements;

(F) Soil test data;

(G) Boring location; and

(H) Standard penetration number of ASTM standard D1586-67.

((v))) (vii) All borings not converted to monitoring wells or piezometers ((shall)) must be carefully backfilled, plugged and recorded in accordance with WAC 173-160-420(());

((v))) (viii) During the borehole drilling program, any on-site drilling and lithologic unit identification must be performed by a ((hydrogeologist,)) geologist or other ((qualified groundwater scientist)) licensed professional in accordance with the requirements of chapter 18.220 RCW, Geologists, who is trained to sample and identify soils and bedrock lithology.

(c) Depths to groundwater and hydrostratigraphic unit(s) including transmissive and confining units;

(d) Potentiometric surface elevations and contour maps; direction and rate of horizontal and vertical groundwater flow;

(e) A description of regional groundwater trends including vertical and horizontal flow directions and rates;

(f) All elevations and top of well casings ((shall)) must be related to the ((national geodetic)) North American vertical datum of ((1929 (NGVD 29))) 1988 (NAVD88) and the horizontal datum ((shall)) must be in accordance with chapter 58.20 RCW, Washington Coordinate System and as amended per chapter 332-130 WAC(());

(g) Quantity, location, and construction (where available) of private and public wells within a two thousand foot (six hundred ten meter) radius of site;

(h) Tabulation of all water rights for groundwater and surface water within a two thousand foot (six hundred ten meter) radius of the site;

(i) Identification and description of all surface waters within a one-mile (1.6 kilometer) radius of the site;

(j) A summary of all previously collected groundwater and surface water analytical data, and for expanded facilities, identification of impacts ((of)) from the existing facility ((of the applicant to date upon)) on ground and surface waters ((from landfill leachate discharges));

(k) Calculation of a site water balance;

(l) Conceptual design of a groundwater and surface water monitoring system, including proposed installation methods for ((these)) all devices and well construction diagrams, and where applicable a vadose zone monitoring plan((, including well construction diagrams));

(m) Land use in the area, including nearby residences; ((and))

(n) A topographic map of the site and drainage patterns; an outline of the waste management area and MSWLF units, property boundary, the proposed location of groundwater monitoring wells; and

(o) Geologic cross-sections.

(3) Groundwater flow path analysis. The hydrogeologic report ((shall)) must include a summary groundwater flow path analysis which includes all supportive documentation, and calculations of the performance criteria of WAC 173-351-405.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-500 Closure and post-closure care. (1) Closure criteria.

(a) ((Nonarid areas.)) Owners or operators of all MSWLF ((units located in areas having mean annual precipitation of equal to or greater than twelve inches,)) must install a final cover system that is designed to minimize infiltration and erosion.

(i) The final cover system must be designed and constructed to:

(A) Have a permeability less than or equal to the permeability of any bottom liner system and natural subsoils present, and minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains a composite layer as defined in (a)(i)(B) of this subsection;

(B) For the purpose of this section, "composite layer" means a system consisting of two components; the upper component must consist of a minimum of 30 mil (0.76 mm) thickness of geomembrane (60 mils (1.5 mm) for high density polyethylene geomembranes). The lower component must consist of at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-5} cm/sec. The geomembrane must be installed in direct and uniform contact with the compacted soil component;

(C) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of a one-foot (30 cm) layer of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and

(D) Address anticipated settlement (with a goal of achieving no less than two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.

(ii) The jurisdictional health department, with the written concurrence of the department, may approve an alternative final cover design equivalent to that specified in (a)(i) of this subsection that includes:

(A) An anti-infiltration layer that achieves an equivalent reduction in infiltration as the anti-infiltration layer specified in (a)(i)(A) and (B) of this subsection;

(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as the anti-erosion layer specified in (a)(i)(C) of this subsection; and

(C) The additional design features of (a)(i)(D) of this subsection.

(b) ~~((Arid areas. Owners or operators of all MSWLF units located in arid areas must install a final cover system that is designed to minimize infiltration and erosion.)~~

(i) ~~The final cover system must be designed and constructed to:~~

~~(A) Minimize infiltration through the closed MSWLF by the use of an anti-infiltration layer that contains at least a two-foot (60 cm) layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-5} cm/sec;~~

~~(B) Minimize erosion of the final cover by use of an anti-erosion layer that contains a minimum of one foot (30 cm) layer of earthen material of which at least six inches (15 cm) of the uppermost layer is capable of sustaining native plant growth; and~~

~~(C) Address anticipated settlement (with a goal of reaching two to five percent slopes after settlement), drainage and/or the need for drainage layers, gas generation and/or the need for gas layers, freeze-thaw, desiccation and stability and mechanical strength of the design.~~

(ii) The jurisdictional health department may approve an alternative final cover design to that specified in (b)(i) of this subsection that includes:

(A) An anti-infiltration layer that achieves an equivalent reduction in infiltration as the anti-infiltration layer specified in (b)(i)(A) of this subsection;

(B) An anti-erosion layer that provides equivalent protection from wind and water erosion as the anti-erosion layer specified in (b)(i)(B) of this subsection; and

(C) The additional design features of (b)(i)(C) of this subsection.

(e)) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during its active life. The closure plan must be submitted to and approved by the jurisdictional health department during the permit process of ((Section 700)) WAC 173-351-700 and((,-at a minimum,)) must include the following information:

(i) A description of the final cover, designed in accordance with (a) ((or (b))) of this subsection and the methods and procedures to be used to install the cover;

(ii) An estimate of the largest area of the MSWLF unit or all MSWLF units ever requiring a final cover as required under (a) ((or (b))) of this subsection at any time during the active life;

(iii) An estimate of the maximum inventory of wastes ever on-site over the active life of the facility; and

(iv) A schedule for completing all activities necessary to satisfy the closure criteria in this subsection ((+), Closure criteria)) including sequencing of each MSWLF unit and the use of intermediate cover.

((d)) (c) The owner or operator of existing MSWLF units must no later than ~~((the effective date of this chapter)) November 26, 1993:~~

(i) Prepare a closure plan;

(ii) Place the closure plan in the operating record; and

((d)) (c)(i) and (ii) of this subsection have occurred.

((e)) (d) One hundred eighty days (but no sooner than ~~((the effective date of this chapter)) November 26, 1993~~) prior to beginning closure activities of each MSWLF unit or all MSWLF units as specified in ((f)) (e) of this subsection, the owner or operator must:

(i) Notify the jurisdictional health department and the financial assurance trustee and/or insurer of the intent to close the MSWLF unit or all MSWLF units according to the approved closure plan; and

(ii) Submit final engineering closure plans for review, comment, and approval by the jurisdictional health department.

((f)) (e) The owner or operator must begin closure activities of each MSWLF unit or all MSWLF units in accordance with the closure plan no later than thirty days after the date on which the MSWLF unit or all MSWLF units receives the known final receipt of wastes ~~((or, if))~~. If the MSWLF unit or all MSWLF units has remaining capacity and there is a reasonable likelihood that the MSWLF unit or all MSWLF units will receive additional wastes, the owner or operator must begin closure activities no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the jurisdictional health department if the owner or operator demonstrates during the permit process of WAC 173-351-700 that the MSWLF unit or all MSWLF units has the capacity to receive additional waste and the owner or operator has taken and will continue to take all steps including the application of intermediate cover necessary to prevent threats to human health and the environment from the unclosed MSWLF unit or all MSWLF units.

((g)) (f) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit or all MSWLF units in accordance with the closure plan within one hundred eighty days following the beginning of closure as specified in ((f)) (e) of this subsection. Extensions of the closure period may be granted by the jurisdictional health department if the owner or operator demonstrates that closure will, of necessity, take longer than one hundred eighty days and he/she has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

((h)) (g) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department a certification or declaration of construction signed by an independent registered professional engineer verifying that closure has been completed in accordance with the approved final engineering plans and the closure plan.

((i)) Notation on the deed.

((j)) (h) Environmental covenant. Following closure of all MSWLF units, the owner or operator must ~~((record a notation on the deed to the facility property, and send a copy of~~

~~the notation as recorded to the jurisdictional health department.~~

(ii) ~~The notation on the deed must in perpetuity notify any potential purchaser of the property that:~~

- (A) ~~The land has been used as a landfill facility; and~~
- (B) ~~Its use is restricted under subsection (2)(e)(iii) of this section.~~

~~(j) The owner or operator may request permission from the jurisdictional health department to remove the notation from the deed if all wastes (including any contaminated groundwater and soils) are removed from the facility.) file an environmental covenant conforming to the procedures and requirements of chapter 64.70 RCW, Uniform Environmental Covenants Act. Unless waived in writing by the department, the environmental covenant shall be in a form approved by the department and include at a minimum the following provisions:~~

(i) State that the document is an environmental covenant executed pursuant to chapter 64.70 RCW;

(ii) Contain a legally sufficient description of the real property subject to the covenant;

(iii) Designate the department, or other person approved by the department, as the holder of the covenant;

(iv) Be signed by the department, every holder, and, unless waived by the department, every owner of a fee simple interest in the real property subject to the covenant;

(v) Identify the name and location of the administrative record for the property subject to the environmental covenant;

(vi) Describe with specificity the activity or use limitations on the real property subject to the covenant. At a minimum, this shall prohibit uses and activities that:

(A) Threatens the integrity of any cover, waste containment, storm water control, gas, leachate, public access control, or environmental monitoring systems;

(B) May interfere with the operation and maintenance, monitoring, or other measures necessary to assure the integrity of the MSWLF unit and continued protection of human health and the environment; and

(C) May result in the release of solid waste constituents or otherwise exacerbate exposures.

(i) Grant the department and the jurisdictional health department the right to enter the property at reasonable times for the purpose of evaluating compliance with the environmental covenant, including the right to take samples.

(2) Post-closure care requirements.

(a) Following closure of each MSWLF unit or all MSWLF units, the owner or operator must conduct post-closure care. Post-closure care must be conducted for thirty years((, except)) or as long as necessary for the landfill to become functionally stable. A landfill is functionally stable when it does not present a threat to human health or the environment at the point of exposure for humans or environmental receptors. The point of exposure is identified as the closest location at which a receptor could be exposed to contaminants and receive a dose by a credible pathway from the MSWLF unit. Potential threats to human health or the environment are assessed by considering leachate quality and quantity, landfill gas production rate and composition, cover system integrity, and groundwater quality. The post-closure

care period may be adjusted as provided under (b) of this subsection ((and)). Post-closure care must consist of at least the following:

(i) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, maintaining the vegetative cover (including cutting of vegetation when needed) or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

(ii) Maintaining and operating the leachate collection system in accordance with the requirements in WAC 173-351-300 if applicable. The jurisdictional health department may recommend to the department and the department under its authority in chapter 90.48 RCW, the Water Pollution Control Act, may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(iii) Monitoring the groundwater in accordance with the requirements of WAC 173-351-400((, Groundwater monitoring systems and corrective action)) and maintaining the groundwater monitoring system((, if applicable)); and

(iv) Maintaining and operating the gas monitoring system in accordance with the requirements of WAC 173-351-200(4).

(b) The length of the post-closure care period may be:

(i) Decreased by the jurisdictional health department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the jurisdictional health department; or

(ii) Increased by the jurisdictional health department if the jurisdictional health department determines that the lengthened period is necessary to protect human health and the environment((,));

(iii) The jurisdictional health department and owner or operator will consider at least the following factors when determining when a landfill unit is functionally stable or whether to decrease or increase the post-closure care period:

(A) Leachate. Leachate production and quality must be such that maintenance and operation of the leachate collection system can be ceased beyond the post-closure care period without posing a threat to human health or the environment.

(B) Landfill gas. Landfill gas production and composition must be such that maintenance and operation of the gas collection system can be ceased beyond the post-closure care period while meeting the criteria in WAC 173-351-200 (4)(a)(i) through (iii) and not pose a threat to human health or the environment from methane or nonmethane compounds.

(C) Settlement and cover integrity. The cover system must attain geotechnical stability for slope and settlement. Vegetation and other erosion controls must prevent exposing waste or otherwise threaten integrity of the cover system. The cover system must stabilize such that no additional care is required beyond the post-closure care period to ensure its integrity from settlement or erosion.

(D) Groundwater quality. Groundwater quality must remain in compliance with the protection standards estab-

lished in WAC 173-351-440(7) at the relevant point of compliance.

(c) The owner or operator of all MSWLF units must prepare and submit a written post-closure plan ((that is approved) for approval) by the jurisdictional health department during the permit process of ((Section 700 and) WAC 173-351-700) that includes((, at a minimum,)) the following information:

(i) A description of the monitoring and maintenance activities required in (a) of this subsection for each MSWLF unit or all MSWLF units, and the frequency at which these activities will be performed;

(ii) A description of the monitoring performed and an estimate of the time required following closure of each MSWLF unit or all MSWLF units to meet the criteria in (b)(iii) of this subsection;

(iii) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

((iii)) (iv) A description of the planned uses of the property during the post-closure period and activity or use limitations placed on the real property by the environmental covenant (1)(h) of this section. Post-closure use of the property ((shall)) must not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring or control systems unless necessary to comply with the requirements of this regulation. The jurisdictional health department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) ((The owner or operator of existing MSWLF units must notify the jurisdictional health department that a post-closure plan has been prepared and placed in the operating record no later than the effective date of this regulation.

((e))) Following completion of the post-closure care period for each MSWLF unit or all MSWLF units, the owner or operator must submit to the jurisdictional health department ((and the financial assurance trustee and/or insurer)) a certification or declaration of construction signed by an independent ((registered)) licensed professional engineer verifying that post-closure has been completed in accordance with the post-closure plan.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-600 Financial assurance criteria. (1)

Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all MSWLF units.

(b) The requirements of this section are effective on the effective date of this rule((, except as provided herein)).

(2) Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to close the largest area of all

MSWLF units ever requiring a final cover as required under WAC 173-351-500(1), Closure criteria, at any time during the active life in accordance with the closure plan. The owner or operator must ((place)) submit the detailed written estimate for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((in order for the jurisdictional health department to determine whether a solid waste permit should be issued)).

(i) The cost estimate must equal the cost of closing the largest area of ((the MSWLF unit or)) all MSWLF units ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by ((its)) the closure plan ((see)) as required in WAC 173-351-500 (1)(((e)))(b)(ii).

(ii) During the active life of ((the MSWLF unit or)) all MSWLF units, the owner or operator must annually adjust the closure cost estimate for inflation.

(iii) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(iv) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of ((the MSWLF unit or)) all MSWLF units. The owner or operator must submit justification for the reduction of the closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

((v) During the active life of the MSWLF unit, the owner or operator must review the closure cost estimate by March 1st of each calendar year. The findings of the review, and any adjustments to the closure cost estimate made in accordance with this subsection, must be submitted to the jurisdictional health department and the department by April 1st of each calendar year. The jurisdictional health department will evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation.

(b) The owner or operator of each MSWLF unit ((or all MSWLF units)) must establish financial assurance for closure of the MSWLF unit ((or all MSWLF units)) in compliance with ((WAC 173-351-600(5), Allowable mechanisms)) subsection (5) of this section. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with WAC 173-351-500 (1)(((b)))(g) and (((f)))(h).

(3) Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to conduct post-closure care for ((the MSWLF unit or)) all MSWLF units in compliance with the post-closure plan developed under WAC 173-351-500(2). The post-closure cost estimate ((used to demonstrate, during the permit process of WAC 173-351-700, financial assurance in (b) of this subsection)) must account for the total costs of conducting post-closure care, including annual and periodic

costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must ((place)) submit the detailed written estimate for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((in order for the jurisdictional health department to determine whether a solid waste permit should be issued)).

(i) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(ii) During the active life of ((the)) each MSWLF unit ((or all MSWLF units)) and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(iii) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(iv) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must submit justification for the reduction of the post-closure cost estimate and the amount of financial assurance to the jurisdictional health department for approval as a condition of the solid waste permit.

(v) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must review the post-closure cost estimate by March 1st of each calendar year. The findings of the review, and any adjustments to the post-closure cost estimate made in accordance with this subsection, must be submitted to the jurisdictional health department and the department by April 1st of each calendar year. The jurisdictional health department will evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation.

(b) The owner or operator of each MSWLF unit ((or all MSWLF units)) must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the costs of post-closure care as required under WAC 173-351-500(2). The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with WAC 173-351-500 (2)(e).

(4) Financial assurance for ((corrective)) remedial action.

(a) An owner or operator of a MSWLF unit ((or all MSWLF units)) required to undertake a ((corrective)) remedial action program under WAC 173-351-440(6) must have a detailed written estimate, in current dollars, of the cost of hiring a third party under a contract subject to chapter 39.12 RCW, Prevailing wages on public works, to perform the ((corrective)) remedial action in accordance with the program required under WAC 173-351-440(6). The ((corrective)) remedial action cost estimate must account for the total costs of ((corrective)) remedial action activities as described in the ((corrective)) cleanup action plan for the entire ((corrective))

remedial action period. Cost estimates are not required for interim actions when the estimated time required to complete the interim action is less than the remaining active life of the MSWLF unit. The owner or operator must submit the ((corrective)) remedial action cost estimate to the ((jurisdictional health)) department for approval.

(i) The owner or operator must annually adjust the estimate for inflation until the ((corrective)) remedial action program is completed in accordance with WAC 173-351-440(6).

(ii) The owner or operator must increase the ((corrective)) remedial action cost estimate and the amount of financial assurance provided under (b) of this subsection if changes in the ((corrective)) remedial action program or MSWLF unit conditions increase the maximum costs of ((corrective)) remedial action.

(iii) The owner or operator may reduce the amount of the ((corrective)) remedial action cost estimate and the amount of financial assurance provided under (b) of this subsection if the cost estimate exceeds the maximum remaining costs of ((corrective)) remedial action. The owner or operator must submit justification for the reduction of the ((corrective)) remedial action cost estimate and the amount of financial assurance to the ((jurisdictional health)) department for approval.

(iv) While required to undertake a remedial action program under WAC 173-351-440(6), the owner or operator must review the remedial action cost estimate by March 1st of each calendar year. The findings of the review, and any adjustments to the remedial action cost estimate made in accordance with this subsection, must be submitted to the jurisdictional health department and the department by April 1st of each calendar year. The department will evaluate each cost estimate for completeness, and may accept, or require a revision of the cost estimate in accordance with its evaluation.

(b) The owner or operator of each MSWLF unit ((or all MSWLF units)) required to undertake a ((corrective)) remedial action program under WAC 173-351-440(6), must establish, in a manner in accordance with subsection (5) of this section, financial assurance for the ((most recent corrective)) costs of remedial actions identified in the cleanup action ((program)) plan. The owner or operator must provide continuous coverage for ((corrective)) remedial action until released from ((financial assurance requirements for corrective)) remedial action under the Model Toxics Control Act regulation, chapter 173-340 WAC. Financial assurance is not required for interim actions when the estimated time required to complete the interim action is less than the remaining active life of the MSWLF unit.

((e) The requirements of this subsection become effective April 9, 1994.))

(5) Allowable mechanisms. ((The mechanisms used to demonstrate financial assurance under WAC 173-351-600 must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Except as otherwise provided herein, owners and operators of MSWLF units must use the financial mechanisms specified in (a) or (b) of this subsection.

~~(a) For MSWLF units owned or operated by municipal corporations, the closure, post-closure, and corrective action reserve account shall be handled in one of the following ways:~~

~~(i) Reserve account. Cash and investments accumulated and restricted for closure, post-closure, and corrective action for known releases with an equivalent amount of fund balance reserved in the fund accounting for solid waste activity; or~~

~~(ii) The cash and investments held in a nonexpendable trust fund as specified in (e) of this subsection.~~

~~(b) For MSWLF units owned by private disposal companies, the closure, post-closure, and corrective action for known releases financial assurance account shall be a trust account as spelled out in (e) of this subsection, except that established financial assurance accounts shall not constitute an asset of the facility owner or operator.~~

~~((e))) Owners and operators of MSWLF units must use the financial mechanisms specified in (a), (b), or (c) of this subsection.~~

~~(a) Municipal corporations owning or operating MSWLF units must establish closure, post-closure, and remedial action reserve accounts in one of the following ways:~~

~~(i) Reserve account. Cash and investments accumulated in a reserve fund restricted for the purpose of closure, post-closure care, or remedial action for known releases; or~~

~~(ii) Cash and investments held in a nonexpendable trust fund as specified in subsection (6)(a) of this section.~~

~~(iii) Municipal corporations may satisfy the financial assurance requirements of this section for remedial action in one of the following additional ways:~~

~~(A) An interlocal agreement entered into under the Interlocal Cooperation Act, chapter 39.34 RCW, obligating the participating local governments to pay for the remedial action; and~~

~~(B) Local government financial test in conformance with 40 CFR 258.74(f). All records required under 40 CFR Part 358.74 (f)(3) must be submitted to the jurisdictional health department and the department.~~

~~(b) Private companies owning or operating MSWLF units must establish closure, post-closure, and remedial action financial assurance in one of the following ways:~~

~~(i) Cash or investments in a trust fund;~~

~~(ii) Surety bond(s);~~

~~(iii) Letter of credit.~~

~~(c) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a) and (b) of this subsection, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure, or remedial action, whichever is applicable. Mechanisms guaranteeing performance rather than payment may not be combined with other instruments.~~

~~(d) The language of the financial assurance mechanisms listed in this section must ensure that the instruments satisfy the following criteria:~~

(i) The amount of funds assured is sufficient to cover the costs of closure, post-closure, and remedial action for known releases when needed;

(ii) The funds will be available in a timely fashion when needed; and

(iii) The owner or operator must obtain financial assurance by the effective date of these requirements or prior to the initial receipt of solid waste for closure and post-closure, and no later than one hundred twenty days after establishment of the cleanup action plan for remedial action.

(e) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.

(f) An owner or operator satisfying the requirements of this section using a reserve account or trust fund must file with the jurisdictional health department and the department audit reports of the financial assurance accounts established for closure, post-closure, and remedial action, and a statement of the percentage of user fees, as applicable, diverted to the financial assurance instruments, for the previous calendar year:

(i) For facilities owned and operated by municipal corporations, the financial assurance accounts must be audited according to the audit schedule of the office of state auditor. A certification of audit completion and summary findings must be filed with the jurisdictional health department and the department, including during the post-closure care period and while required to undertake remedial action.

(ii) For facilities not owned or operated by municipal corporations:

(A) Annual audits must be conducted by a certified public accountant licensed in the state of Washington. A certification of audit completion and summary findings must be filed with the jurisdictional health department and the department, including during the post-closure care period and while required to undertake remedial action.

(B) The audit must also include, as applicable, calculations demonstrating the proportion of closure, post-closure, or remedial action activities completed during the preceding year as specified in the closure, post-closure, or cleanup action plans.

(6) Financial assurance instruments established under this section must meet the following criteria.

(a) Trust fund. An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of ((e))) (a)(i) through ((xi)) (viii) of this subsection.

(i) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. The owner or operator must place a copy of the trust agreement for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 ((in order for the jurisdictional health department to determine whether a solid waste permit should be issued)) for closure and post-closure financial assurance and to the department for approval for remedial action financial assurance.

(ii) Pay-in period. Payments into the trust fund must be made annually by the owner or operator over the duration (as defined in WAC 173-351-750) of the initial or reissued permit or over the remaining life of the MSWLF unit ((or all

~~MSWLF units~~), whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the ~~((corrective)) remedial~~ action program in the case of ~~((corrective)) remedial~~ action for known releases. This period is referred to as the pay-in period.

(iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into ~~((each)) the~~ fund must be at least equal to the current cost estimate for closure or post-closure care, except when using multiple mechanisms as provided in ~~((the)) subsection (5)(c)~~ of this ~~((subsection)) section~~, divided by the number of years in the pay-in period as defined in ~~((the)) (a)(ii)~~ of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(iv) For a trust fund used to demonstrate financial assurance for ~~((corrective)) remedial~~ action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for ~~((corrective)) remedial~~ action, except when using multiple mechanisms as provided in ~~((the)) subsection (5)(c)~~ of this ~~((subsection)) section~~, divided by the number of years in the ~~((corrective)) remedial~~ action pay-in period as defined in ~~((the)) (a)(ii)~~ of this subsection. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for ~~((corrective)) remedial~~ action (i.e., the total costs that will be incurred during the second half of the ~~((corrective)) remedial~~ action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(v) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section, whichever is later, in the case of closure and post-closure care, or no later than one hundred twenty days after the ~~((corrective)) cleanup~~ action ~~((remedy)) plan~~ has been ~~((selected)) established~~ in accordance with the requirements of WAC ~~((173-351-480)) 173-351-440~~ (6) and (7).

(vi) If ~~((a municipal corporation owning or operating MSWLF units)) the owner or operator~~ establishes a trust fund after having used ~~((cash and investments held in a nonexpendable reserve account specified in (a)(i) of)) one or more alternate mechanisms specified in this subsection~~, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of ~~((this paragraph and (e))) (a)(iii) and (iv)~~ of this subsection as applicable.

(vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or ~~((corrective)) remedial~~

action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if:

(A) Sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or ~~((corrective)) remedial~~ action;

(B) If justification and documentation of the cost is submitted to the jurisdictional health department ~~for closure and post-closure or the department for remedial action~~ for review and approval; and

(C) The owner or operator has a post-closure permit in effect according to WAC ~~((173-351-730)) 173-351-720~~ (4)(c).

(viii) The trust fund may be terminated by the owner or operator only if:

~~((ix) In the case of a municipal corporation owning or operating MSWLF units, the municipal corporation)) (A) The owner or operator substitutes ((a reserve account as specified in (a)(i) of)) alternate financial assurance as specified in this subsection; or~~

~~((x) Any)) (B) The owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of subsection (2)(b), (3)(b), or (4)(b) of this section.~~

~~((d) Use of multiple financial mechanisms. A municipal corporation owning or operating MSWLF units may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in (a) and (b) of this subsection, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable.~~

~~((e) For MSWLF units undergoing corrective action, allowable financial assurance mechanisms include:~~

~~((i) Any method approved by EPA under 40 CFR 258.74(f);~~

~~((ii) An interlocal agreement entered into under the Interlocal Cooperation Act, chapter 39.34 RCW, obligating the participating local governments to pay for the corrective action.~~

~~((f) The language of the mechanisms listed in (a) and (b) of this subsection must ensure that the instruments satisfy the following criteria:~~

~~((i) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;~~

~~((ii) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;~~

~~((iii) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than one hundred twenty days after the corrective action remedy has been selected in accordance with the requirements of WAC 173-351-460, until the owner or operator is released from the financial assurance require-~~

~~ments under subsection (2)(b), (3)(b), or (4)(b) of this section.~~

(g) The financial assurance mechanisms must be legally valid, binding, and enforceable under state and federal law.)

(b) Surety bond guaranteeing payment or performance. An owner or operator may satisfy the requirements of this section with a surety bond guaranteeing payment or performance which conforms to the requirements of (b)(i) through (viii) of this subsection.

(i) The owner or operator must place a copy of the bond and standby trust agreement for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 for closure and post-closure financial assurance and the department for approval for remedial action financial assurance.

(ii) The surety company must be listed as acceptable in Circular 570 of the United States Treasury Department.

(iii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure, or remedial action cost estimate except when using multiple financial mechanisms as provided in subsection (5)(d) of this section.

(iv) The surety must become liable for the bond obligation if the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator must also establish a standby trust fund meeting the requirements of (6)(a) of this subsection except for specified initial and subsequent annual payments. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(vi) The surety may not cancel the bond until at least one hundred twenty days after the owner or operator, the jurisdictional health department, and the department have received notice of cancellation. If the owner or operator has not provided alternate financial assurance conforming to this section within ninety days of the cancellation notice, the surety must pay the amount of the bond into the standby trust fund.

(vii) The owner or operator may cancel the bond only by substituting alternate financial assurance conforming to this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with subsection (2)(b), (3)(b), or (4)(b) of this section.

(viii) The following types of surety bonds are allowed:

(A) Surety bond; or

(B) Surety bond guaranteeing that the owner or operator will perform final closure, post-closure, or remedial action activities.

(c) Irrevocable letter of credit. An owner or operator may satisfy the requirements of this section with an irrevocable letter of credit which conforms to the requirements of (c)(i) through (v) of this subsection. The issuing institution must have the authority to issue letters of credit and its letter of credit operations must be regulated and examined by a federal or state agency.

(i) The owner or operator must also establish a standby trust fund meeting the requirements of (a) of this subsection except for specified initial and subsequent annual payments. Payments made under the terms of the irrevocable letter of credit will be deposited by the institution directly into the

standby trust fund. Payments from the trust fund must be approved by the trustee.

(ii) The following must be submitted for approval by the jurisdictional health department in the application for a permit under WAC 173-351-700 for closure and post-closure financial assurance, and to the department for approval for remedial action financial assurance:

(A) The letter of credit;

(B) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, address of the facility, and the amount of funds assured; and

(C) A copy of the standby trust agreement.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current closure, post-closure, or remedial action cost estimate except when using multiple financial mechanisms as provided in subsection (5)(d) of this section. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution notifies the owner or operator, the jurisdictional health department, and the department at least one hundred twenty days before the current expiration date.

(iv) If the owner or operator fails to perform activities according to the closure, post-closure, or cleanup action plans, or if the owner or operator fails to provide alternate financial assurance conforming to this section within ninety days after notification that the letter of credit will not be extended, the issuing institution must deposit the funds from the letter of credit to the standby trust fund.

(v) The owner or operator may cancel the letter of credit only by substituting alternate financial assurance conforming to this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with subsection (2)(b), (3)(b), or (4)(b) of this section.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-700 Permitting requirements.

(1) WAC 173-351-700 through 173-351-750 ((shall constitute)) are the permitting requirements of chapter 173-351 WAC, Criteria for municipal solid waste landfills. Except as provided ((for)) in subsection (((5))) (4) of this section, no owner or operator shall construct, operate, close, or perform post-closure activity with respect to a facility except in conformance with a valid MSWLF permit issued pursuant to this chapter.

(2) Transition rules for existing MSWLF units. The following constitute the transition rules for this section:

(a) Existing MSWLF units with valid chapter 173-304 WAC permits expiring before ((the effective date of this chapter)) November 26, 1993. Owners or operators of existing MSWLF units having valid permits expiring before ((the effective date of this chapter)) November 26, 1993, must apply for a valid MSWLF permit no later than ((ninety days after promulgation of this regulation)) January 24, 1994, to continue operation under the terms of this regulation. Each valid chapter 173-304 WAC permit expiring before ((the effective date of this chapter)) November 26, 1993, is hereby

continued until the valid MSWLF permit is issued under these rules. For these transition rules, the owner or operator ((shall)) must prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

Note: MSWLF units that do not accept waste on or after ((the effective date of this chapter)) November 26, 1993, and close under chapter 173-304 WAC, Minimum functional standards for solid waste handling, and the federal rules for closure under 40 CFR Part 258.60 would continue to be permitted under chapter 173-304 WAC unless such MSWLF units are part of a multunit groundwater monitoring system according to WAC 173-351-450(4).

(b) Existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after ((the effective date of this chapter)) November 26, 1993. Each valid chapter 173-304 WAC permit (for existing MSWLF units) expiring on or after ((the effective date of this rule)) November 26, 1993, is hereby continued until the expiration date set forth in the permit. Owners and operators must comply with the conditions of the permit and the regulations of chapter 173-304 WAC, in effect on October 8, 1993, for the duration of that permit. Owners or operators of existing MSWLF units with valid chapter 173-304 WAC permits expiring on or after ((the effective date of this chapter)) November 26, 1993, must apply for a valid MSWLF permit no later than ((ninety days after promulgation of this regulation)) January 24, 1994. For these transition rules, the owner or operator ((shall)) must prepare applications according to WAC 173-351-730(4), Reissuance/transition applications. Upon issuance of a valid MSWLF permit, the owner or operator must comply with the requirements of this regulation.

((Note: See also WAC 173-351-720(6)(a), filing for reissuance.))

(3) New and laterally expanded MSWLF units. New and laterally expanded MSWLF units receiving waste after ((the effective date of this chapter)) November 26, 1993, ((shall)) must meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit or lateral expansion.

Note: Any owner or operator planning to incorporate a 50 percent increase or greater in design volume capacity not previously authorized in permit, or unpermitted changes resulting in significant adverse environmental impacts that have ((lead)) led a responsible official to issue a declaration of significance under WAC 197-11-736 ((shall)) must meet the requirements of this section before construction has begun and before waste is accepted to the MSWLF unit, or lateral expansion.

(4) Exemptions. The MSWLF units identified in this subsection are exempt from this section:

(a) MSWLF units that are excluded under WAC 173-351-010 (2)(b);

(b) Single family residences and single family farms dumping or depositing solid waste resulting from their own domestic, on-site activities onto or under the surface of land owned or leased by them when such action does not create a nuisance, violate any other statutes, ordinances, regulations, or this regulation, provided that such facilities:

(i) Are fenced or otherwise protected by natural barriers from unauthorized entry by the general public and large animal scavengers; and

(ii) Have placed a monthly soil cover to allow no visible solid waste.

(c) ((Corrective)) Remedial actions at a MSWLF unit performed by the state and/or in conjunction with the United States Environmental Protection Agency to implement the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), the Model Toxics Control Act or ((corrective)) remedial actions taken by others to comply with a state and/or federal cleanup order provided that:

(i) The action results in an overall improvement of the environmental impact of the site;

(ii) The action does not require or result in additional waste being delivered to the facility or increase the amount of waste or contamination present at the facility;

(iii) The ((facility standards of WAC 173-351-300, 173-351-320, and 173-351-500)) substantive provisions of this chapter are met; and

(iv) The jurisdictional health department is informed of the actions to be taken and is given the opportunity to review and comment upon the proposed ((corrective)) remedial action plans.

Note: MSWLF units not covered under ((corrective)) remedial action are not exempted from permitting under this section.

((5) Renewal required. The owner or operator of a facility shall apply for renewal of the facility's permit annually, except for that year that a permit has been or will be reissued under WAC 173-351-720(6).))

NEW SECTION

WAC 173-351-710 Research, development, and demonstration permits. (1) The jurisdictional health department, with the written concurrence of the department, may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, from which the owner or operator proposes to utilize innovative methods which vary from the following criteria provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a one foot (30 cm) depth of leachate on the liner and has not been identified as a potential source of contamination:

(a) The run-on control system in WAC 173-351-200(7); and

(b) The liquids restriction in WAC 173-351-200(9).

(2) The jurisdictional health department, with the written concurrence of the department, may issue a research, development, and demonstration permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative methods which vary from the final cover criteria of WAC 173-351-500 (1)(a), provided the MSWLF unit owner or operator demonstrates that the MSWLF unit is not a source of contamination and the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause the leachate depth on the liner to exceed one foot (30 cm).

(3) The jurisdictional health department and the department must follow the procedures of WAC 173-351-720(1) except must not issue a permit if the department recommends against its issuance. Any permit issued under this section must include terms and conditions that are at least as protective as the criteria for municipal solid waste landfills, and assure protection of human health and the environment. Such permits must:

(a) Include clearly stated and demonstrable project goals;

(b) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in subsections (5) and (6) of this section;

(c) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and non-hazardous waste which the jurisdictional health department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(d) Include requirements necessary to protect human health and the environment, including requirements necessary for testing and providing information to the jurisdictional health department with respect to the operation of the facility;

(e) Require the owner or operator of a permitted MSWLF unit under this section to submit an annual report to the jurisdictional health department and the department showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results and any other operating information specified by the jurisdictional health department in the permit; and

(f) Require compliance with all criteria in this chapter, except as permitted under this section.

(4) The jurisdictional health department may order an immediate termination of all operations at the facility permitted under this section or other corrective measures any time it determines that the overall goals of the project are not being attained or protecting human health and the environment.

(5) Any permit issued under this section must not exceed three years and each renewal must not exceed three years. The total term for a project permit including renewals may not exceed twelve years.

(6) Permit renewal.

(a) The owner or operator of a MSWLF unit must apply for renewal of a permit under this section at least ninety days before the existing permit expires. The owner or operator must provide the jurisdictional health department two copies of:

(i) A detailed assessment of the project showing the status with respect to achieving project goals;

(ii) A list of problems and status with respect to problem resolutions;

(iii) The information required in WAC 173-351-730 (3)(b); and

(iv) Any other requirements that the jurisdictional health department determines necessary for permit renewal.

(b) Once the jurisdictional health department determines that a renewal application is factually complete, it must refer

one copy to the appropriate regional office of the department for review and comment.

(c) Standards for approval. The jurisdictional health department and the department must review the original application and additional information contained in the renewal application to determine whether the facility meets all applicable laws and regulations and conforms to the most recently adopted comprehensive solid waste management plan.

(d) Fees. The jurisdictional health department may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department must be deposited in the account from which the jurisdictional health department's operating expenses are paid.

(e) Department's findings. The department will report to the jurisdictional health department its findings on each renewal permit application within thirty days of receipt of a complete application. Additionally, the department must recommend for or against the renewal of each research, demonstration, and demonstration permit by the jurisdictional health department.

(f) Permit approval. When the jurisdictional health department has evaluated all information in the renewal application, it will, with the written concurrence of the department renew the permit for a period not to exceed three years or deny the permit. Every complete renewal application must be approved or disapproved within forty-five days after its receipt by the jurisdictional health department or inform the owner or operator as to the status of the application with a schedule for final determination.

(g) Permit format. Every permit issued by a jurisdictional health department must be on a format prescribed by the department and contain specific requirements necessary for the proper operation of the facility including the requirement that final engineering plans and specifications be submitted for approval by the jurisdictional health department.

(h) Filing permits with the department. The jurisdictional health department must mail all renewed permits to the department no more than seven days after the date of issuance. The department will review and may appeal the permit as set forth in RCW 70.95.185 and 70.95.190. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-720 Permit application procedures.
(1) Initial and reissuance procedures.

(a) Forms and complete application. An application for ((any)) a permit under this regulation must be submitted on a form prescribed by the department. In order to be ((determined)) complete:

(i) Two or more copies (as determined by the jurisdictional health department) of the application must have been signed by the owner and operator and received by the jurisdictional health department;

(ii) The application must include evidence of compliance with the State Environmental Policy Act (SEPA) rules, chapter 197-11 WAC; and

(iii) The application must include the plans, reports, and other supporting information required by this regulation.

(b) Notice. Once the jurisdictional health department determines that an application for a permit is ((factually)) complete, it ((shall)) will:

(i) Refer one copy to the appropriate regional office of the department for review and comment;

(ii) For all permits except renewal, modified and transition permits give notice of its receipt of a ((proposed)) complete permit application to the public and to interested persons for public comment for thirty days after the publication date of the notice((*;*

((iii) For all permits except renewal, modified and transition permits)) and perform the following additional public notification requirements:

(A) Mail the notice to persons who have requested notice in writing;

(B) Mail the notice to state agencies and local governments with a regulatory interest in the proposal;

(C) Include in the public notice a statement that any person may express their views in writing to the jurisdictional health department within thirty days of the last date of publication;

(D) Mail a copy of the MSWLF permit decision to any person who has made written request for such decision; and

(E) Add the name of any person, upon request, to a mailing list to receive copies of notices for all applications((*, within the state or within a geographical area*)).

(c) Standards for approval. The jurisdictional health department ((shall)) must investigate every application to determine whether the facility meets all applicable laws and regulations, conforms ((with)) to the most recently adopted comprehensive solid waste management plan in effect at the time of application and complies with all zoning requirements. A land use permit or letter from the jurisdictional zoning authority ((shall be)) is sufficient ((demonstration of)) to demonstrate compliance with zoning requirements.

(d) Fees. The jurisdictional health department may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department ((shall)) must be deposited in the account from which the jurisdictional health department's operating expenses are paid.

(e) Department's findings. The department ((shall)) will report to the jurisdictional health department its findings on each permit application within forty-five days of receipt of a complete application or inform the jurisdictional health department as to the status of the application and when it expects its findings will be transmitted to the jurisdictional health department. Additionally, the department ((shall)) must recommend for or against the issuance of each permit by the jurisdictional health department.

(f) Permit approval. When the jurisdictional health department has evaluated all information in the public record, it ((shall)) will issue or deny a permit. Every ((completed solid waste)) complete permit application ((shall)) must be approved or disapproved within ninety days after its receipt by the jurisdictional health department or inform the owner or operator ((shall be informed)) as to the status of the application with a schedule for final determination.

(g) Permit format. Every permit issued by a jurisdictional health department ((shall)) must be on a format prescribed by the department and ((shall)) contain specific requirements necessary for the proper operation of the facility including the requirement that final engineering plans and specifications be submitted for approval ((to)) by the jurisdictional health department.

(h) Filing permits with the department. The jurisdictional health department ((shall)) must mail all issued permits to the department no more than seven days after the date of issuance. The department ((shall)) will review and may appeal the permit as set forth in RCW 70.95.185 and 70.95.190. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

((i)) Renewal procedures. The owner or operator of a facility shall apply for renewal of the MSWLF permit annually, except for that year that a permit has been or will be reissued under subsection (6) of this section. The owner or operator is authorized to continue all activities authorized under the currently expired permit, if the jurisdictional health department has not rendered a decision on renewal by the yearly renewal date of the current permit. The jurisdictional health department shall annually:

(A) Review the original application and such additional information as required in WAC 173-351-730 (3)(b) for compliance with these regulations;

(B) Collect the renewal fee if the jurisdictional health department so chooses;

(C) If the requirements of (b)(i)(A) of this subsection are met, renew the permit; and

(D) File the renewed permit with the department no more than seven days after the date of renewal. The department shall review and may appeal the renewal as set forth in RCW 70.95.185 and 70.95.190. See also reissuance under subsection (6) of this section.) (2) SEPA review. The State Environmental Policy Act (SEPA), the SEPA rules and ((the)) local SEPA rules apply to permit decisions made pursuant to this chapter.

(3) Preapplication meetings. Preapplication meetings between the jurisdictional health department and the owner or operator are encouraged to address, among other things, the development of a complete application ((pertaining to the owner's or operator's prospective project)).

(4) Activities authorized in permits, generally.

(a) Construction. ((Issuance of)) A valid MSWLF permit entitles the ((permittee)) owner or operator to construct the MSWLF unit or MSWLF units, subject to ((any appropriate)) conditions the jurisdictional health department may impose. ((If the facility is to be constructed in several or more MSWLF units, the initial application must contain the conceptual design for the entire facility and the information of WAC 173-351-730 (1)(b) for the initial MSWLF unit. In addition, information of WAC 173-351-730 (1)(b) may be submitted covering all other MSWLF units that will be constructed up to the first ten years of facility operation. The permit will identify the extent of each permitted MSWLF unit and the specific time frames for the first MSWLF unit and estimated time frames for subsequent MSWLF units within which construction activities must begin and end for each MSWLF unit.)) Authorization to construct each lateral

expansion or subsequent MSWLF unit ((must, as to that MSWLF unit, contain the detailed construction plans as specified in this regulation, and those plans)) is subject to the pre-construction review requirements of WAC 173-351-750(4) and the construction of ((that)) each lateral expansion or MSWLF unit must comply with all requirements of ((the SEPA and of)) this regulation and other regulations applicable at the time jurisdictional health department approval is granted.

(b) Operation. Except for MSWLF units governed by the transition rules of WAC 173-351-700(2), the jurisdictional health department's approval to accept solid waste will not be given until the ((permittee)) owner or operator has demonstrated to the jurisdictional health department's satisfaction that ((the)) each MSWLF unit has been constructed in accordance with the approved plans and specifications for that MSWLF unit. ((If a facility is to be constructed in several or more MSWLF units, the jurisdictional health department must determine that each specific MSWLF unit has been constructed in accordance with the approved permit before operation will be permitted in that specific MSWLF unit.))

(c) Post-closure activities. The jurisdictional health department's approval for post-closure activities will not be given until the permittee has demonstrated to the jurisdictional health department's satisfaction that the MSWLF unit or all the MSWLF units have been closed in accordance with the final engineering plans of WAC 173-351-500 (1)(e)(ii) and the approved closure plan.

Note: Failure to obtain approval for post-closure activities may prevent reimbursement under post-closure financial assurance in WAC 173-351-600.

(5) Renewal procedures. Except as provided in WAC 173-351-710(6), the owner or operator of a facility must apply for renewal of the MSWLF permit at least thirty days before the renewal date. The owner or operator is authorized to continue activities authorized under the most recent expired permit, if the jurisdictional health department has not rendered a decision on renewal by the renewal date of the current permit.

(a) Prior to renewing a permit, the jurisdictional health department will:

(i) Review the original application, modifications, and additional information required in WAC 173-351-730 (3)(b) for compliance with these regulations; and

(ii) Collect the renewal fee if the jurisdictional health department so chooses.

(b) If the facility meets all applicable laws and regulations and conforms to the most recently adopted comprehensive solid waste management plan, the jurisdictional health department may renew the permit for a period not to exceed five years; and

(c) The jurisdictional health department must file the renewed permit with the department no more than seven days after the date of renewal. The department will review and may appeal the renewal as set forth in RCW 70.95.185 and 70.95.190. See also reissuance under subsection (6) of this section. No permit issued pursuant to this chapter will be valid unless it has been reviewed by the department.

(6) Permit modifications.

(a) Any owner or operator intending to modify a valid MSWLF permit must file a modification application at least ((thirty)) forty-five days before the intended modification. A modification application must be made on forms authorized by the jurisdictional health department and the department, and the forms must include information identified in WAC 173-351-730 (3)(a).

(b) The jurisdictional health department ((shall)) will follow the procedures of subsection (1) of this section in issuing a permit modification except for the following:

(i) Subsection (1)(b)(ii) and (iii) of this section, public notice; ((and))

((Subsection (1)(i) of this section, renewal procedures.)) The department will report its findings under subsection (1)(e) of this section within thirty days; and

((The jurisdictional health department will approve or disapprove the modification application within forty-five days after its receipt or inform the owner or operator as to the status of the application with a schedule for final determination.))

(c) ((In order)) To allow for permit modifications to be authorized at the time of permit renewal, any owner or operator may combine the application required for a permit modification in WAC 173-351-730 (3)(a) with the application required for a renewal permit in WAC 173-351-730 (3)(b)((; at the time of permit renewal)).

((((d)) Lateral expansions, a fifty percent increase or greater in design volume capacity, or changes resulting in significant adverse environmental impacts that have led a responsible official to issue a declaration of significance under WAC 197-11-736 are not considered a modification but require permit reissuance under these rules.))

(7) Permit reissuance. ((Except for permits during transition under subsection (2) of this section.)) Any owner or operator intending to continue construction, operation, or post-closure beyond the permitted duration of a valid MSWLF permit must file a reissuance application at least ninety days before the existing permit expires. Reissuance applications are subject to the public notification process of subsection (1)(b) of this section. A reissuance application must be made on forms authorized by the jurisdictional health department and the department, and must include information identified in WAC 173-351-730(4). The jurisdictional health department will follow the procedures of subsection (1) of this section in reissuing a permit.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-730 Contents of applications. (1) Applications for MSWLF permits and level of detail((, generally)).

(a) General requirements for MSWLF permit applications and level of detail.

(i) An application for an MSWLF permit to construct, operate, and conduct post-closure activities at a facility must include all applicable information identified in this section ((pertaining to the facility for which the permit is being sought)).

(ii) The information in every application submitted under this regulation must be of sufficient detail so as to allow the jurisdictional health department to fulfill its responsibilities under SEPA and this regulation by:

(A) Having detail sufficient to be readily understood by the persons using the documents ((~~contained in the application~~)) to enable them to determine how the facility will be constructed, operated, and closed and how it will be monitored and maintained after closure;

(B) Providing the jurisdictional health department with sufficient detail to ascertain the environmental impact of the proposed project; and

(C) Providing sufficient detail to demonstrate that the location, design, construction, operation, closure, and post-closure monitoring and maintenance of the MSWLF will be capable of compliance with the applicable requirements of this regulation.

(iii) If the facility is to be constructed in phases, the initial application must contain the conceptual design for the entire facility and the information of subsection (1)(b) of this section for the initial MSWLF unit and other MSWLF units that will be constructed during the active life of the facility.

(iv) Applications for new MSWLF units or lateral expansions must include documentation that all owners of property located within one thousand feet of the facility property boundary have been notified that the proposed facility may impact their ability to construct water supply wells in accordance with chapter 173-160 WAC, Minimum standards for construction and maintenance of wells.

(b) Specific requirements for permit applications. In addition to other requirements set forth in this section, complete applications for MSWLF permits must contain the following:

(i) Engineering plans that set forth the proposed facility's location, property boundaries, adjacent land uses, and detailed construction plans pursuant to subsection (5)(a) of this section;

(ii) How the facility will meet the location standards of WAC 173-351-130 and 173-351-140 ((~~including demonstrations~~));

(iii) A hydrogeologic report and water quality monitoring plan prepared in accordance with the provisions of WAC 173-351-400 ((~~including all demonstrations~~)));

(iv) ((The)) A plan of operation that ((~~prescribes~~)) describes how the facility will ((~~fulfill~~)) meet the operating requirements set forth in WAC 173-351-200, 173-351-210, and 173-351-220((, ~~including the demonstrations of this regulation~~));

(v) An engineering report ((~~comprehensively~~)) describing the existing site conditions and an analysis of the facility, including closure((,)) and post-closure criteria((, ~~and any necessary demonstrations~~)) conforming with subsection (5)(b) of this section;

(vi) A construction quality assurance and quality control plan prepared in accordance with subsection (6) of this section;

(vii) ((The)) Closure and post-closure plans required by WAC 173-351-500((, ~~including the schedule of WAC 173-351-500 (1)(e)(iv) and for the submission of final engineer-~~))

~~ing plans for closure six months prior to closure of the facility or the MSWLF unit. See WAC 173-351-500 (1)(e)(iv))~~;

(viii) A permit or signed permit application satisfying the applicable requirements for MSWLF units with leachate collection systems:

(A) Discharge under the Water Pollution Control Act, chapter 90.48 RCW:

(B) Either a legal document (contract, local permit, a signed permit application etc.) certifying acceptance of leachate by the operator of a wastewater treatment facility for the discharge of leachate to that facility((, or an application for a National Discharge Elimination System (NPDES) permit pursuant to chapter 173-220 WAC or a state discharge permit (for solar evaporation ponds having no surface water discharge) pursuant to chapter 173-216 WAC or other necessary environmental permit applications (including air quality permit applications) for otherwise managing leachate;

(ix) For small landfills, the demonstration of WAC 173-351-010 (2)(e));

((x))) (C) Surface impoundments or tanks under WAC 173-350-330; and

(D) Other environmental permits applicable to managing leachate at the facility.

(ix) Cost estimates and mechanisms the owner or operator will use to meet the financial assurance requirements of WAC 173-351-600;

(x) How the owner or operator will meet the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities;

(xi) A demonstration of how the MSWLF conforms ((with)) to the approved local comprehensive solid waste management plan in place at the time of application; and

(xii) Any other information as required by the jurisdictional health department.

(2) Combined applications. Owners or operators may file a combined application for MSWLF units and other solid waste handling ((~~facilities~~)) units, such as surface impoundments, composting facilities, and storage piles regulated under chapter 173-350 WAC, Solid waste handling standards, and MSWLF units closed under and/or regulated by chapter 173-304 WAC, Minimum functional standards for solid waste handling or other rules promulgated under the authority of chapter 70.95 RCW, including this regulation. The combined application must contain information required by each applicable regulation.

(3) Modification and renewal applications.

(a) Modification applications. An application on forms specified by the jurisdictional health department and the department to modify a valid MSWLF permit issued pursuant to WAC 173-351-700 must include, and address, the following ((at a minimum)):

(i) A description of the proposed modification;

(ii) The reasons for the proposed modification;

(iii) A description of the impacts from the proposed modification upon the MSWLF unit or the facility as presently permitted; ((~~and~~))

(iv) A showing that, as modified, the MSWLF unit will be capable of compliance with the applicable requirements of this regulation; and

(v) Any other information as required by the jurisdictional health department.

(b) Renewal applications. An application on forms specified by the jurisdictional health department and the department to renew a permit issued pursuant to WAC 173-351-700 must include and address the following ((at a minimum)):

(i) Any changes in operating methods((, closure cost or post-closure costs)) or other changes not falling under the definition of a permit modification;

(ii) Any changes as revealed by inspections, or complaints;

(iii) ((Evidence that the annual report of WAC 173-351-200(11) has been submitted;))

((iv))) A list of documents added to the operating record according to WAC 173-351-200(10); ((and

((v))) (iv) Evidence that all MSWLF unit operators have continued to comply with the certification requirements of chapter 173-300 WAC, Certification of operators of solid waste incinerator and landfill facilities; and

(v) Any other information as required by the jurisdictional health department.

(4) Reissuance/transition applications. An application to reissue a permit previously issued pursuant to this regulation or to convert a chapter 173-304 WAC permit to a valid MSWLF permit under the transition permit rules of WAC 173-351-700(2) must((, at a minimum,)) include and address the following:

(a) Review the original application and permit for compliance with these regulations and submit ((such)) additional information as follows:

(i) A compliance summary showing how the facility's construction, operation, closure and post-closure activities, as applicable, have been undertaken either in compliance or not in compliance with the terms and conditions of the expiring permit;

(ii) ((Specifying)) Specify any changes proposed by the owner or operator to((, and detailing any changes in circumstance that may affect,)) the design, construction, operation, closure, or post-closure care of the facility and describing how ((compliance)) the proposed changes will comply with the applicable requirements of this regulation ((will be assured)).

(b) Review ((ef)) information collected from inspections, complaints, or known changes in the operations including:

(i) Results of groundwater monitoring ((taken during the operation (including closure/post-closure) of the facility according to WAC 173-351-400 or 173-304-490 as appropriate)); and

(ii) Results of surface water and methane monitoring ((taken during the operation (including closure/post-closure) of the facility)).

(5) Engineering plans, reports, and specifications. Unless otherwise specified in chapter 173-351 WAC, all engineering plans, reports, ((and)) specifications, programs, and manuals must comply with the requirements of this subsection. Engineering plans, reports, specifications, programs, and manuals submitted to the jurisdictional health department or the department must be prepared and certified by an individual licensed to practice engineering in the state of Wash-

ington, in engineering disciplines associated with landfill design and construction or with experience in landfill design and construction and to practice engineering ((in the state of Washington)).

(a) Engineering plans. Unless otherwise specified in this chapter, ((the)) engineering plans for all MSWLF units must be submitted using the following format:

(i) The sheet size with title blocks must be twenty-two inches by thirty-four inches or twenty-four inches by thirty-six inches.

(ii) The cover sheet must include the project title, owner's and operator's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.

(iii) The preliminary engineering plans relating the project to its environmental setting must include:

(A) A regional plan or map (having a minimum scale of 1:62,500) and indicate directions and distances to airports within ((five)) six miles ((eight)) ten kilometers) of the facility;

(B) A vicinity plan or map (having a minimum scale of 1:24,000) that ((must)) shows the area within one mile (1.6 kilometers) of the property boundaries of the facility in terms of, the existing and proposed zoning and land uses within that area; and residences, public and private water supply wells, known private water supply aquifers, sole source aquifers, groundwater management areas, well-head protection zones, special protection areas and surface waters (with quality classifications), access roads, bridges, railroads, airports, historic sites, and other existing and proposed man-made or natural features relating to the facility; and

(C) An overall site plan (having a minimum scale of 1:2,400 with five foot (or one meter) minimum contour intervals) that must show the landfill's property boundaries (as certified by an individual licensed to practice land surveying in the state of Washington), offsite and onsite utilities (such as electric, gas, water, storm, and sanitary sewer systems) and right of way easements; the 100-year flood plain, wetlands, Holocene faults, unstable areas; the names and addresses of contiguous property owners; the location of soil borings, excavations, test pits, gas venting structures, wells (including down-gradient drinking water supply wells within two thousand feet (six hundred ten meters) of the property boundary), lysimeters, piezometers, environmental and facility monitoring points and devices (with each identified in accordance with a numbering system acceptable to the jurisdictional health department and whose horizontal location are accurate to the nearest 0.5 foot (0.15 meter) and all orthometric evaluations should be related to a vertical benchmark based on the ((national geodetic)) North American vertical datum of ((1929 (NGVD29))) 1988 (NAVD88) and be established to 3rd order classification standards per federal geodetic control committee, ((or its successor, as specified in WAC 332-130-060)) as measured from the ground surface and top of well casing), benchmarks and permanent survey markers, and onsite buildings and appurtenances, fences, gates, roads, parking areas, drainage culverts, and signs; the delineation of the total landfill area including planned staged development of the landfill's construction and operation, and the lateral and vertical limits of previously filled areas; the location and

identification of the sources of cover materials; the location and identification of special waste handling areas; a wind rose; and site topography with five foot (or one meter) minimum contour intervals.

Note: All horizontal locations (~~((shall))~~ must be based upon a control station related to a horizontal datum specified in chapter 58.20 RCW and chapter 332-130 WAC (NAD 83 ((+99+))).

(D) Detailed plans of the landfill (~~((must))~~ that clearly show in plan and cross-sectional views, the original, undeveloped site topography before excavation or placement of solid waste; the existing site topography (if different from the original, undeveloped site topography) including the location and approximate thickness and nature of any existing solid waste; the seasonal high groundwater table; generalized geologic units; known and interpolated bedrock elevations; the proposed limits of excavation and waste placement; the location and placement of each liner system and of each leachate collection system, locating and showing all critical grades and elevations of the collection pipe inverts and drainage envelopes, manholes, cleanouts, valves, sumps, and drainage blanket thicknesses; all berms, dikes, ditches, swales and other devices as needed to divert or collect surface water runoff or runoff; the final elevations and grades of the landfill cover system including the grading and gas venting layer, low permeability barrier, topsoil layers; the system used for monitoring and venting the decomposition gases generated within the landfill; groundwater monitoring wells; geophysical and geochemical monitoring devices or structures; leachate storage, treatment and disposal systems including the collection network, sedimentation ponds and any treatment, pre-treatment, or storage facilities; typical roadway sections, indicating the pavement type, dimensions, slopes and profiles; the building floor plans, elevations, appurtenances; and plans detailing the landfill entrance area including gates, fences, and signs.

(b) Engineering reports. The engineering reports for a facility must:

(i) Contain a cover sheet, stating the project title and location, the owner's or operator's name, and the engineer's name, address, signature, date of signature, and seal~~(((-)))~~;

(ii) Have its text printed on 8 1/2" by 11" pages (paginated consecutively);

(iii) Contain a table of contents or index describing the body of the report and the appendices;

(iv) Include a body of report whose content is described by (c) of this subsection; and

(v) Include all appendices.

(c) An engineering report (~~((containing))~~ must contain a description of the existing site conditions and, at a minimum, an analysis of the proposed facility that must:

(i) Describe current operating practices, expected life and any pending litigation or ~~((corrective))~~ remedial actions relating to the existing or past facilities;

(ii) Specify the proposed design capacity of the MSWLF unit for which approval is being sought, describing the number, types, and the minimum specifications of all the necessary machinery and equipment needed to effectively operate the landfill at the proposed design capacity;

(iii) Contain a site analysis (~~((of the proposed action))~~ including:

(A) The location of the closest population centers;

(B) A comprehensive description of the primary transportation systems and routes in the facility service area (i.e., highways, airports, railways, etc.);

(C) An analysis of the existing topography, surface water and subsurface geological conditions in accordance with the hydrogeologic report requirements of WAC 173-351-490;

(D) A description of the materials and construction methods used for the placement of each groundwater monitoring well pursuant to the requirements of WAC 173-351-400 and gas monitoring well pursuant to WAC 173-351-200(4); all gas venting systems; each liner and leachate collection and removal system; leachate storage, treatment, and disposal systems; and cover systems to demonstrate conformance with the design requirements found in WAC 173-351-300, 173-351-320, and 173-351-500. This description also must include a discussion of provisions to be taken to prevent frost action upon each liner system in areas where refuse has not been placed;

(E) An estimate of the expected quantity of leachate to be generated, including:

(I) An annual water budget that estimates leachate generation quantities during ~~((initial))~~ operation, upon application of intermediate cover, and following MSWLF unit or all MSWLF units closure. At a minimum, the following factors must be considered in the preparation of the water budget to determine the amount of leachate generated as a result of precipitation infiltration into the MSWLF unit or all the MSWLF units: Average monthly temperature, average monthly precipitation, evaporation, evapotranspiration which considers the vegetation type and root zone depth, surface/cover soil conditions and their relation to precipitation runoff which must account for the surface conditions and soil moisture holding capacity and all other sources of moisture contribution to the landfill;

(II) Liner and leachate collection system efficiencies that must be calculated using an appropriate analytical or numerical assessment. The factors to be considered in the calculation of collection system efficiency must include, at a minimum, the saturated hydraulic conductivity of the liner, the liner thickness, the saturated hydraulic conductivity of the leachate collection system, the leachate collection system porosity, the base slope of the liner and leachate collection and removal system interface, the maximum flow distance across the liner and leachate collection and removal system interface to the nearest leachate collection pipe, the estimated leachate generation quantity as computed in accordance with the requirements of (c)(iii)(E)(I) of this subsection; and

(III) Predictions of the static head of leachate on the liners, volume of leachate to be collected, and the volume of leachate that may permeate through the entire liner system, all on a monthly basis. Information gained from the collection efficiency calculations required in (c)(iii)(E)(I) and (II) of this subsection must be used to make these predictions. This assessment also must address the amount of leachate expected to pass through the liner system in gallons per acre per day (liters per square meter per day).

(d) Discuss the closure and post-closure maintenance and operation of the facility which must include, but not be limited to:

- (i) A closure design consistent with the requirements of WAC 173-351-500;
- (ii) A post-closure water quality monitoring program consistent with the requirements of WAC 173-351-400 and 173-351-500;
- (iii) An operation and closure plan for the leachate collection, treatment, and storage facilities consistent with the requirements of this regulation and chapter 173-350 WAC (~~173-304-430~~); (and)
- (iv) An estimate of the time required following closure of each MSWLF unit or all MSWLF units to meet the criteria in WAC 173-351-500 (2)(b)(iii); and

(v) A discussion of the future use of the facility, including the specific proposed or alternative uses during the post-closure period. Future uses must not adversely affect the final cover system. See WAC 173-351-500 (2)(c)(iii).

(e) Appendices must be submitted as part of an engineering report (~~((submitted))~~) with an application to construct a new or laterally expanded MSWLF unit and must contain:

- (i) Appropriate charts and graphs;
 - (ii) Copies of record forms used at the MSWLF unit;
 - (iii) Test pit logs, soil boring logs, and geological information (such as stratigraphic sections, geophysical and geochemical surveys, and water quality analyses);
 - (iv) Engineering calculations (including the raw data from which they were made);
 - (v) Other supporting data, including literature citations.
- (6) Construction quality assurance and construction quality control plans.

The construction quality assurance (QA) and construction quality control (QC) plan must address the construction of the MSWLF unit according to the designs set forth in chapter 173-351 WAC. (Construction QA and construction QC are defined in WAC 173-351-100.) The owner or operator may submit separate construction QA plans and construction QC plans. For each ((specified)) phase of construction, these plans must include((, but not be limited to)):

(a) A delineation of ((the)) responsibilities for the QA management organization and the QC management organization, including the chain of command of the QA inspectors and contractors and the QC inspectors and contractors; quality assurance ((shall)) must be performed by a third party organization that is independent of the landfill owner/operator/contractor.

(b) A description of the required level of experience and training for the contractor, his/her crew, and QA and QC inspectors for every ((major)) phase of construction in sufficient detail to demonstrate that the approved installation methods and procedures will be properly implemented; and

(c) A description of the QA and QC testing protocols for every major phase of construction, which must include, at a minimum, the frequency of inspection, field testing, sampling for laboratory testing, the sampling and field testing procedures and equipment to be utilized, the calibration of field testing equipment, the frequency of performance audits, the sampling size, the laboratory procedures to be utilized, the calibration of laboratory equipment and QA/QC of labo-

ratory procedures, the limits for test failure, and a description of the corrective procedures to be used upon test failure.

Note: It is intended that owners or operators will select and pay for the independent third party construction quality assurance firm, who will report to the owner or operator.

(7) Signature and verification of applications.

(a) All applications for permits must be accompanied by evidence of authority to sign the application and must be signed by the owner or operator as follows:

(i) In the case of corporations, by a duly authorized principal executive officer of at least the level of vice-president; in the case of a partnership or limited partnership, by:

- (ii) A general partner;
- (iii) Proprietor; or
- (iv) In the case of a sole proprietorship, by the proprietor;

(v) In the case of a municipal, state, or other governmental entity, by a duly authorized principal executive officer or elected official.

(b) Applications must be sworn to by, or on behalf of, the owner or operator, in respect to the veracity all statements therein; or must bear an executed statement by, or on behalf of, the owner or operator to the effect that false statements made therein are made under penalty of perjury.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-740 Permit issuance criteria. The jurisdictional health department may issue, reissue, or modify a MSWLF permit to a facility, only if:

(1) The application's engineering and hydrogeological data and construction plans and specifications required by this regulation ((pertaining to such a MSWLF unit or MSWLF units substantiate)) demonstrate that the proposed MSWLF unit or MSWLF units meets the requirements of this regulation;

(2) The application demonstrates the facility's ability to operate and close in accordance with the requirements of this regulation;

(3) The application demonstrates the facility's ability to conduct post-closure activities in accordance with the requirements of this regulation; ((and a form of surety or financial responsibility for post-closure activities has been filed with the jurisdictional health department; and))

(4) The owner or operator has established a financial assurance mechanism meeting the requirements of this regulation and has submitted, as applicable:

(a) A copy of the ordinance establishing the reserve account; or

(b) The original signed documents for trust funds, surety bonds, or letters of credit for closure and post-closure financial assurance; and

(5) The application demonstrates the facility's consistency with the local solid waste management plan in effect at the time of application.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-750 Permit provisions. (1) Mitigation of adverse impacts. The jurisdictional health department may impose conditions in each permit, to assure mitigation of adverse environmental impacts pursuant to SEPA, chapter 43.21C RCW and to ((insure)) ensure compliance with the requirements ((identified in WAC 173-351-130 through 173-351-600, with the applicable sections pertaining to such a MSWLF unit or all MSWLF units;)) of this regulation and with other applicable laws and regulations.

(2) Transferability.

(a) All permits issued pursuant to this regulation are transferable only upon prior written approval of the jurisdictional health department and a demonstration that the prospective transferee will be able to comply with applicable laws and regulations, permit conditions, and other requirements to which the prospective transferor is subject.

(b) Upon transfer of ownership of all or part of a facility, a provision must be included in the property deed indicating the period of time during which the facility has been disposing of solid waste, a description of the solid waste contained within, and the fact that the records for the facility have been filed with the jurisdictional health department. The deed also must reference a map, which must be filed with the county clerk, showing the limits of the active areas as defined in WAC 173-351-100.

(3) Duration of permits. The jurisdictional health department must specify the duration of the MSWLF permit ((not to exceed ten years)). Except as provided in WAC 173-351-710(5), permits must be renewed ((annually)) at least every five years on a date established by the jurisdictional health department. If a permit is to be renewed for longer than one year, the jurisdictional health department may hold a public hearing before making a decision. Permits must be renewed according to WAC ((173-351-730(3))) 173-351-710(5) or 173-351-720(5), and reissued according to WAC 173-351-720((6)) (7).

(4) Preconstruction review condition. The jurisdictional health department ((shall)) must include in each permit for a new MSWLF unit or lateral expansion a condition requiring the owner or operator((g)) to submit the following documents sixty days prior to beginning construction, and to obtain the jurisdictional health department's approval that the following documents conform ((with)) to the engineering report and with the requirements of this chapter:

- (a) Final design drawings;
- (b) Construction specifications; and
- (c) A construction quality assurance manual for the following MSWLF components:
 - (i) Bottom liner;
 - (ii) Leachate collection and removal system;
 - (iii) Landfill gas control system;
 - (iv) Leachate and landfill gas condensate treatment and disposal system; and
 - (v) Final cover system.

(5) Supervision and certification or declaration of construction. The construction of a MSWLF unit must be undertaken:

(a) Under the supervision of an individual licensed to practice engineering in the state of Washington; and

(b) In conformance with the construction quality assurance plan of WAC 173-351-730(6).

(6) Preoperation review conditions. Each permit issued under this chapter for a new MSWLF unit or lateral expansion ((shall)) must contain a condition requiring that upon completion of construction, the licensed ((engineered)) engineer who supervised construction ((shall)) must certify or declare in writing that the construction is in accordance with the terms of the applicable permit and tested in accordance with construction quality assurance plans of WAC 173-351-730(6). Except as specified elsewhere in this regulation, this certification or declaration must be submitted to the jurisdictional health department within three months after completion of construction and must include recorded construction drawings and specifications. The owner or operator must notify the jurisdictional health department, in writing, of the date when solid waste will be first received at the MSWLF unit.

(7) Cessation of construction or operation activities. If construction or operation activities started under a permit issued pursuant to this chapter cease for a period of twelve consecutive months, the jurisdictional health department may in its discretion revoke the permit. The jurisdictional health department ((shall)) must provide notice to the owner or operator in writing explaining the reasons for revocation. The jurisdictional health department ((shall)) must not revoke a permit where the cessation of construction or operation is caused by factors beyond the reasonable control of the permittee or when such cessation is in accordance with the provisions of the permit.

(8) Design volume capacity and construction. Every MSWLF permit must ((set forth)) specify the facility's approved design volume capacity and identify the extent of each permitted MSWLF unit and the specific time frames for construction of the first MSWLF unit and estimated time frames for construction of subsequent MSWLF units.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-760 Appeals. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it ((shall)) must, upon request of the application or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request ((therefor)) is made. Notice of the hearing ((shall)) must be given to all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing the health officer ((shall)) must notify the applicant or the holder of the permit in writing of ((his)) the determination ((thereof)). Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board ((shall)) will hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 93-22-016, filed 10/26/93, effective 11/26/93)

WAC 173-351-990 Appendices.

APPENDIX I([†])

Appendix I - Constituents for Detection Monitoring

	COMMON NAME ⁽²⁾ ¹	CAS RN ⁽³⁾ ²
Inorganic Constituents		
1)	Antimony(((Dissolved)) Total)	
2)	Arsenic(((Dissolved)) Total)	
3)	Barium(((Dissolved)) Total)	
4)	Beryllium(((Dissolved)) Total)	
5)	Cadmium(((Dissolved)) Total)	
6)	Chromium(((Dissolved)) Total)	
7)	Cobalt(((Dissolved)) Total)	
8)	Copper(((Dissolved)) Total)	
9)	Lead(((Dissolved)) Total)	
10)	Nickel(((Dissolved)) Total)	
11)	Selenium(((Dissolved)) Total)	
12)	Silver(((Dissolved)) Total)	
13)	Thallium(((Dissolved)) Total)	
14)	Vanadium(((Dissolved)) Total)	
15)	Zinc(((Dissolved)) Total)	
16)	Nitrate	
Organic Constituents		
17)	Acetone	67-64-1
18)	Acrylonitrile.	107-13-1
19)	Benzene	71-43-2
20)	Bromochloromethane	74-97-5
21)	Bromodichloromethane	75-27-4
22)	Bromoform; Tribromomethane	75-25-2
23)	Carbon disulfide.	75-15-0
24)	Carbon tetrachloride	56-23-5
25)	Chlorobenzene	108-90-7
26)	Chloroethane; Ethyl chloride.	75-00-3
27)	Chloroform; Trichloromethane	67-66-3
28)	Dibromochloromethane; Chlorodibromomethane	124-48-1
29)	1,2-Dibromo-3-chloropropane; DBCP . . .	96-12-8
30)	1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
31)	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
32)	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
33)	trans-1,4-Dichloro-2-butene	110-57-6
34)	1,1-Dichloroethane; Ethylidene chloride	75-34-3

	COMMON NAME ⁽²⁾ ¹	CAS RN ⁽³⁾ ²
Inorganic Constituents		
35)	1,2-Dichloroethane; Ethylene dichloride	107-06-2
36)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
37)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
38)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
39)	1,2-Dichloropropane; Propylene dichloride	78-87-5
40)	cis-1,3-Dichloropropene	10061-01-5
41)	trans-1,3-Dichloropropene.	10061-02-6
42)	Ethylbenzene	100-41-4
43)	2-Hexanone; Methyl butyl ketone ((591-73-6)) 591-78-6	
44)	Methyl bromide; Bromomethane.	74-83-9
45)	Methyl chloride; Chloromethane.	74-87-3
46)	Methylene bromide; Dibromomethane . . .	74-95-3
47)	Methylene chloride; Dichloromethane . . .	75-09-2
48)	Methyl ethyl ketone; MEK; 2-Butanone.	78-93-3
49)	Methyl iodide; Iodomethane	74-88-4
50)	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
51)	Styrene.	100-42-5
52)	1,1,1,2-Tetrachloroethane	630-20-6
53)	1,1,2,2-Tetrachloroethane	79-34-5
54)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
55)	Toluene	108-88-3
56)	1,1,1-Trichloroethane; Methyl chloroform.	71-55-6
57)	1,1,2-Trichloroethane.	79-00-5
58)	Trichloroethylene; Trichloroethene	79-01-6
59)	Trichlorofluoromethane; CFC-11	75-69-4
60)	1,2,3-Trichloropropane	96-18-4
61)	Vinyl acetate	108-05-4
62)	vinyl chloride.	75-01-4
63)	Xylenes	1330-20-7

¹ ((This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.)

²) Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

⁽³⁾ ² Chemical Abstracts Service registry number.

APPENDIX II Groundwater QUALITY PARAMETERS		Magnesium (Mg)	Potassium (K)
Field Parameters		Sulfate (SO ₄)	Alkalinity (as Ca CO ₃)
		<u>Total suspended solids (TSS)</u>	Iron (Fe) (<u>Total</u>)
pH			Manganese (Mn) (<u>Total</u>)
specific conductance			
temperature			
static water level			
Geochemical Indicator Parameters		Leachate Indicators	
Calcium (Ca)	Sodium (Na)	Ammonia (NH ₃ -N)	
Bicarbonate (HCO ₃)	Chloride (Cl)	Total Organic Carbon (TOC)	
		Total Dissolved Solids (TDS)	

APPENDIX III
List of Hazardous Inorganic and Organic Constituents.((*))

Common Name ⁽²⁾⁾ 1 (((mg/L)))	CAS RN ⁽³⁾⁾ 2	Chemical abstracts service index name ⁽⁴⁾⁾ 3	((Suggested- methods))	POL))
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	((8100 8270	200 10))
Acenaphthylene	208-96-8	Acenaphthylene	((8100 8270	200 10))
Acetone	67-64-1	2-Propanone	((8260	100))
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	((8015	100))
Acetophenone	98-86-2	Ethanone, 1-phenyl-	((8270	10))
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	((8270	20))
Acrolein	107-02-8	2-Propenal	((8030 8260	5 100))
Acrylonitrile	107-13-1	2-Propenenitrile	((8030 8260	5 200))
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4, 4a,5,8,8a-hexahydro- (1 α ,4 α , 4a β ,5 α ,8 α ,8a β)-	((8080 8270	0.05 10))
Allyl chloride	107-05-1	1-Propene, 3-chloro-	((8010 8260	5 10))
4-Aminobiphenyl	92-67-1	[1,1 1-Biphenyl]-4-amine	((8270	20))
Anthracene	120-12-7	Anthracene	((8100 8270	200 10))
Antimony	((Dissolved)) Total)	Antimony	((6010 7040 7041	300 2000 30))
Arsenic	((Dissolved)) Total)	Arsenic	((6010 7060 7061	500 10 20))
Barium	((Dissolved)) Total)	Barium	((6010 7080	20 1000))
Benzene	71-43-2	Benzene	((8020 8021 8260	2 0.1 5))

Common Name⁽²⁾ ((mg/L) ⁽⁶⁾)	CAS RN⁽³⁾ 2	Chemical abstracts service index name⁽⁴⁾ 3	((Suggested- methods⁵)	PQL))	
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	((8100 8270 +0))	200 100	
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	((8100 8270 +0))	200 100	
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	((8100 8270 +0))	200 100	
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	((8100 8270 +0))	200 100	
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	((8100 8270 +0))	200 100	
Benzyl alcohol	100-51-6	Benzenemethanol	((8270 +0))	200	
Beryllium	((Dissolved))	Beryllium	((6010 7090 7091 +0))	3 50 200 200	
	<u>Total</u>				
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 β ,6 β)-	((8080 8270 +0))	0.05 100	
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-	((8080 8270 +0))	0.05 200	
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-	((8080 8270 +0))	0.1 200	
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 α ,6 β)-	((8080 8270 +0))	0.05 200	
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 1-[methylenebis(oxy)]bis[2-chloro-	((8110 8270 +0))	5 100	
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 1-oxybis[2-chloro-	((8110 8270 +0))	3 100	
Bis-(2-chloro-1-methylethyl) ether; 2,2 1 -	108-60-1	Propane, 2,2 1-oxybis[1-chloro-	((8110 8270 +0))	10 100	
Dichlorodiisopropyl ether; DCIP, See note ((7))					
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	((8060 +0))	200	
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	((8021 8260 +0))	0.1 50	
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	((8010 8021 8260 +0))	+	0.2 50
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	((8010 8021 8260 +0))	2 15 50	
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	((8110 8270 +0))	25 100	
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	((8060 8270 +0))	5 100	
Cadmium	((Dissolved))	Cadmium	((6010 7130 7131 +0))	40 50 100	
	<u>Total</u>				
Carbon disulfide	75-15-0	Carbon disulfide	((8260 +0))	1000	

Common Name ⁽²⁾ ¹ ((mg/L) ⁶)	CAS RN ⁽³⁾ ²	Chemical abstracts service index name ⁽⁴⁾ ³	((Suggested- methods ⁵	PQL))
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	((8010 8021 8260	+ 0.1 +0))
Chlordane	See Note ((8)) ⁵	4,7-Methano-1H-indene, 1,2,4,5, 6,7,8,8-octachloro-2,3,3a,4,7, 7a-hexahydro-	((8080 8270	0.1 50))
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	((8270	20))
Chlorobenzene	108-90-7	Benzene, chloro-	((8010 8020 8021 8260	2 2 0.1 5))
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro- α - (4-chlorophenyl)- α -hydroxy-, ethyl ester	((8270	+0))
p-Chloro-m-cresol; 4-Chloro-3- methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	((8040 8270	5 20))
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	((8010 8021 8260	5 + +0))
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	((8010 8021 8260	0.5 0.2 5))
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	((8120 8270	+0 +0))
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	((8040 8270	5 +0))
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	((8110 8270	40 +0))
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	((8010 8260	50 20))
Chromium	((Dissolved)) <u>Total</u>	Chromium	((6010 7190 7191	70 500 +0))
Chrysene	218-01-9	Chrysene	((8100 8270	200 +0))
Cobalt	((Dissolved)) <u>Total</u>	Cobalt	((6010 7200 7201	70 500 +0))
Copper	((Dissolved)) <u>Total</u>	Copper	((6010 7210 7211	60 200 +0))
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	((8270	+0))
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	((8270	+0))
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	((8270	+0))
Cyanide	57-12-5	Cyanide	((9010	200))
2,4-D; 2,4- Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4- dichlorophenoxy)-	((8150	+0))

Common Name⁽²⁾¹ ((mg/L)⁶))	CAS RN⁽³⁾²	Chemical abstracts service index name⁽⁴⁾³	((Suggested- methods⁵)	PQL))
4,4 1 -DDD	72-54-8	Benzene, 1,1 1 -(2,2-dichloroethylidene)bis[4-chloro-	((8080 8270	0.1 +10))
4,4 1 -DDE	72-55-9	Benzene, 1,1 1 -(dichloroethylenylidene)bis[4-chloro-	((8080 8270	0.05 +10))
4,4 1 -DDT	50-29-3	Benzene, 1,1 1 -(2,2,2-trichloroethylidene)bis[4-chloro-	((8080 8270	0.1 +10))
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester	((8270	+10))
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	((8100 8270	200 +10))
Dibenzofuran	132-64-9	Dibenzofuran	((8270	+10))
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	((8010 8021 8260	+ 0.3 \$))
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-	((8011 8021 8260	0.1 30 25))
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	((8011 8021 8260	0.1 10 \$))
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	((8060 8270	\$ +10))
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	((8010 8020 8021 8120 8260 8270	2 \$ 0.5 +10 \$ +10))
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	((8010 8020 8021 8120 8260 8270	\$ \$ 0.2 +10 \$ +10))
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	((8010 8020 8021 8120 8260 8270	2 \$ 0.1 +15 \$ +10))
3,3 1 -Dichlorobenzidine	91-94-1	[1,1 1-Biphenyl]-4,4 1-diamine, 3,3 1-dichloro-	((8270	+20))
trans-1,4-Dichloro-2-butene Dichlorodifluoromethane; CFC 12;	110-57-6 75-71-8	2-Butene, 1,4-dichloro-, (E)- Methane, dichlorodifluoro-	((8260 ((8021 8260	+100)) 0.5 \$))

Common Name ⁽²⁾ ¹ ((mg/L) ⁶)	CAS RN ⁽³⁾ ²	Chemical abstracts service index name ⁽⁴⁾ ³	((Suggested- methods ⁵	PQL))
1,1-Dichloroethane; Ethyldene chloride	75-34-3	Ethane, 1,1-dichloro-	((8010 8021 8260 8270	+ 0.5 5))
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	((8010 8021 8260 8270	0.5 0.3 5))
1,1-Dichloroethylene; 1,1- Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	((8010 8021 8260 8270	+ 0.5 5))
cis-1,2-Dichloroethylene; cis- 1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	((8021 8260 8270	0.2 5))
trans-1,2-Dichloroethylene trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	((8010 8021 8260 8270	+ 0.5 5))
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	((8040 8270 8270	5 10))
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	((8270 8270	10))
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	((8010 8021 8260 8270	0.5 0.05 5))
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	((8021 8260 8270	0.3 5))
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	((8021 8260 8270	0.5 15))
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	((8021 8260 8270	0.2 5))
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	((8010 8260 8270	20 10))
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	((8010 8260 8270	5 10))
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3- b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a,2,2a,3,6,6a,7,7a- octahydro-, (1a α ,2 β ,2a α ,3 β ,6 β , 6a α ,7 β ,7a α)-	((8080 8270 8270	0.05 10))
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	((8060 8270 8270	5 10))
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0- diethyl 0-pyrazinyl ester	((8141 8270 8270	5 20))
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0- dimethyl S-[2-(methylamino)-2-oxo- ethyl] ester	((8141 8270 8270	3 20))
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4- (phenylazo)-	((8270 8270 8270	10))
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	((8270 8270 8270	10))
3,3 1 -Dimethylbenzidine	119-93-7	[1,1 1-Biphenyl]-4,4 1-diamine, 3,3 1- dimethyl-	((8270 8270 8270	10))
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	((8040 8270 8270	5 10))

Common Name ⁽²⁾⁾ ¹ ((mg/L) ⁶)	CAS RN ⁽³⁾⁾ ²	Chemical abstracts service index name ⁽⁴⁾⁾ ³	((Suggested- methods ⁵	PQL))
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	((8060 8270	5 10))
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	((8270	20))
4,6-Dinitro-o-cresol 4,6-	534-52-1	Phenol, 2-methyl-4,6-dinitro	((8040 8270	150 50))
Dinitro-2-methylphenol				
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-	((8040 8270	150 50))
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	((8090 8270	0.2 10))
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	((8090 8270	0.1 10))
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	((8150 8270	4 20))
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	((8060 8270	30 10))
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	((8270	10))
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	((8140 8141 8270	2 0.5 10))
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,	((8080 8270	0.1 20))
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxido, (3 α ,5 α ,6 β ,9 β ,9a α)-	((8080 8270	0.05 20))
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-3-dioxide	((8080 8270	0.5 10))
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1a α , 2 β ,2a β ,3 α ,6 α ,6 β ,7 β ,7a α)-	((8080 8270	0.1 20))
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1 α ,2 β ,2a β ,4 β ,4a β ,5 β ,6a β ,6b β ,7R*)-	((8080 8270	0.2 10))
Ethylbenzene	100-41-4	Benzene, ethyl-	((8020 8221 8260	2 0.05 5))
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	((8015 8260 8270	5 10 10))
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	((8270	20))

Common Name⁽²⁾¹ ((mg/L)⁶)	CAS RN⁽³⁾²	Chemical abstracts service index name⁽⁴⁾³	((Suggested- methods⁵)	PQL))
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester	((8270	20))
Fluoranthene	206-44-0	Fluoranthene	((8100 8270	200 +0))
Fluorene	86-73-7	9H-Fluorene	((8100 8270	200 +0))
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-	((8080 8270	0.05 +0))
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1a α , 1b β , 2 α , 5 α , 5a β , 6 β , 6a α)	((8080 8270	+ +0))
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	((8120 8270	0.5 +0))
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	((8021 8120 8260 8270	0.5 5 +0 +0))
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	((8120 8270	5 +0))
Hexachloroethane	67-72-1	Ethane, hexachloro-	((8120 8260 8270	0.5 +0 +0))
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	((8270	+0))
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	((8260	+0))
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	((8100 8270	200 +0))
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	((8015 8240	50 +00))
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro- (1 α ,4 α ,4a β ,5 β ,8 β ,8a β)-	((8270 8260	20 +0))
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	((8090 8270	60 +0))
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	((8270	+0))
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5a,5b,6-decachlorooctahydro-	((8270	+0))
Lead	((Dissolved) <u>Total</u>)	Lead	((6010 7420 7421	400 +1000 +0))
Mercury	(Total)	Mercury	((7470	2))
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	((8015 8260	5 +00))

Common Name ⁽²⁾ ¹ ((mg/L) ⁶)	CAS RN ⁽³⁾ ²	Chemical abstracts service index name ⁽⁴⁾ ³	((Suggested- methods ⁵	PQL))
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N 1-2-pyridinyl-N1/2-thienylmethyl)-	((8270	100))
Methoxychlor	72-43-5	Benzene,1,1 1 -(2,2,2, trichloroethylidene)bis[4-methoxy-	((8080 8270	2 10))
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	((8010 8021	20 10))
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	((8010 8021	1 0.3))
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	((8270	10))
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	((8015 8260	10 100))
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	((8010 8260	40 10))
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	((8015 8260	2 30))
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	((8270	10))
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	((8270	10))
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	((8140 8141 8270	0.5 1 10))
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	((8015 8260	5 100))
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	((8010 8021 8260	15 20 10))
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	((8010 8021 8260 8270	5 0.2 10 10))
Naphthalene	91-20-3	Naphthalene	((8021 8100 8260 8270	0.5 200 5 10))
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	((8270	10))
1-Naphthylamine	134-32-7	1-Naphthalenamine	((8270	10))
2-Naphthylamine	91-59-8	2-Naphthalenamine	((8270	10))
Nickel	(Total)	Nickel	((6010 7520	150 400))
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	((8270	50))
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	((8270	50))
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro	((8270	20))
Nitrobenzene	98-95-3	Benzene, nitro-	((8090 8270	40 10))
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	((8040 8270	5 10))
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	((8040 8270	10 50))
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	((8270	10))

Common Name⁽²⁾ ((mg/L) ⁽⁶⁾)	CAS RN⁽³⁾ 2	Chemical abstracts service index name⁽⁴⁾ 3	((Suggested- methods⁵)	PQL))	
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	((8270	20))	
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	((8070	2))	
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	((8070	5))	
N-Nitrosodipropylamine; N- Nitroso-N-dipropylamine; Di-n- propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-	((8070	10))	
N-Nitrosomethylmethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	((8270	10))	
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	((8270	20))	
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	((8270	40))	
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	((8270	10))	
Parathion	56-38-2	Phosphorothioic acid, 0,0- diethyl 0-(4-nitrophenyl) ester	((8141 8270	0.5 10))	
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	((8270	10))	
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	((8270	20))	
Pentachlorophenol	87-86-5	Phenol, pentachloro-	((8040 8270	5 50))	
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)	((8270	20))	
Phenanthrene	85-01-8	Phenanthrene	((8100 8270	200 10))	
Phenol	108-95-2	Phenol	((8040	10))	
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	((8270	10))	
Phorate	298-02-2	Phosphorodithioic acid, 0,0- diethyl S-[(ethylthio)methyl] ester	((8140 8141 8270	2 0.5 10))	
Polychlorinated biphenyls; PCBs; Aroclors	See Note ((9))	1,1'-Biphenyl, chloro derivatives	((8080 8270	50 200))	
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1- dimethyl-2-propynyl)-	((8270	10))	
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	((8015 8260	60 150))	
Pyrene	129-00-0	Pyrene	((8100 8270	200 10))	
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	((8270	10))	
Selenium	((Dissolved))	Selenium	((6010 7740 7741	750 20 20))	
	<u>Total</u>				
Silver	((Dissolved))	Silver	((6010 7760 7761	70 100 10))	
	<u>Total</u>				
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophe- noxy)-	((8150	2))	
Styrene	100-42-5	Benzene, ethenyl-	((8020 8021 8260	+	0.1 10))
Sulfide	18496-25-8	Sulfide	((9030	4000))	
2,4,5-T; 2,4,5- Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	((8150	2))	

Common Name⁽²⁾ ((mg/L))	CAS RN⁽³⁾	Chemical abstracts service index name⁽⁴⁾ ((<u>5</u>))	((Suggested methods⁵)	PQL))
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	((8270	+0))
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	((8010	5
			8021	0.05
			8260	5))
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	((8010	0.5
			8021	0.1
			8260	5))
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	((8010	0.5
			8021	0.5
			8260	5))
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	((8270	+0))
Thallium	((Dissolved))	Thallium	((6010	400
	<u>Total</u>		7840	1000
			7841	+0))
Tin	((Dissolved))	Tin	((6010	40))
	<u>Total</u>			
Toluene	108-88-3	Benzene, methyl-	((8020	2
			8021	0.1
			8260	5))
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	((8270	+0))
Toxaphene	See Note ((+0))	Toxaphene	((8080	2))
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	((8021	0.3
			8120	0.5
			8260	10
			8270	+0))
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	((8010	0.3
			8021	0.3
			8260	5))
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	((8010	0.2
			8260	5))
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	((8010	+
			8021	0.2
			8260	5))
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	((8010	+0
			8021	0.3
			8260	5))
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	((8270	+0))
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	((8040	5
			8270	+0))
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	((8010	10
			8021	5
			8260	+15))
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethylester	((8270	+0))
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	((8270	+0))
Vanadium	((Dissolved))	Vanadium	((6010	80
	<u>Total</u>		7910	2000
			7911	+40))
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	((8260	50))

Common Name ⁽²⁾ ¹ ((mg/L) ⁶)	CAS RN ⁽³⁾ ²	Chemical abstracts service index name ⁽⁴⁾ ³	((Suggested- methods ⁵ PQL))
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	((8010 8021 8260 +0))
Xylene (total)	See Note ((+)) ⁸	Benzene, dimethyl-	((8020 8021 8260 +5))
Zinc	((Dissolved) <u>Total</u>)	Zinc	((6010 7950 7951 20 50 0.5))

Notes:

- 1 ((The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6. Also, note that the state groundwater quality criteria, chapter 173-200 WAC, takes precedence over these recommended PQL's.)
- 2)) Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
- (3)) 2 Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.
- ((4)) 3 CAS index are those used in the 9th Collective Index.
- ((5)) Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.
- 6 Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.)
- ((7)) 4 This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2"-oxybis[2-chloro- (CAS RN 39638-32-9).
- ((8)) 5 Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). ((PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.))
- ((9)) 6 Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). ((The PQL shown is an average value for PCB congeners.))
- ((+0)) 7 Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.
- ((+1)) 8 Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). ((PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.))

APPENDIX IV PARAMETERS FOR LEACHATE ANALYSIS

Appendix I Parameters

Appendix II Parameters

Nitrite

Total Coliform

COD

BOD

Cyanide

- 4 All metals analysis should be for total recoverable metals, for the leachate analysis only.

Important Note: All other appendices require dissolved metals (field filtration for metals.))

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 12-11-113 PROPOSED RULES DEPARTMENT OF HEALTH

[Filed May 22, 2012, 11:00 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 246-260 WAC, Water recreation facilities and chapter 246-262 WAC, Recreational water contact facilities. Updat-

ing the name and number reference for the suction fittings standard without material change.

Hearing Location(s): Department of Health, 111 Israel Road S.E., Town Center 2, Room 530, Tumwater, WA 98501, on July 10, 2012, at 11:00 a.m.

Date of Intended Adoption: July 17, 2012.

Submit Written Comments to: Gary Fraser, P.O. Box 47825, Olympia, WA 98504-7825, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2261, by July 10, 2012.

Assistance for Persons with Disabilities: Contact Ganel Baker by July 2, 2012, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to adopt the recently-adopted federal drain cover design standards for pools and spas. In addition, limited editorial changes are proposed to improve clarity. The new standard is substantially similar to the current standard. The primary changes in the new standard are the title and issuing organization. The proposed revisions will eliminate confusion and improve statewide consistency in plan review and approval by the department of health and local health jurisdictions.

Reasons Supporting Proposal: On August 5, 2011, the Consumer Product Safety Commission adopted a successor drain cover standard (ANSI/APSP-6 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs). The new standard became effective on September 6, 2011. To eliminate the conflict between the federal standard and the state standard, both chapters of rules must be amended to adopt the new design standard.

Statutory Authority for Adoption: RCW 70.90.120.

Statute Being Implemented: RCW 70.90.120.

Rule is necessary because of federal law, 16 C.F.R. Part 1450, VGB Pool and Spa Safety Act; Incorporation by Reference of Successor Standard (FR Vol. 76, No. 151).

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary Fraser, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3073.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

May 21, 2012

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

WAC 246-260-010 Definitions, abbreviations, and acronyms. The definitions in this section apply throughout this chapter unless the context clearly ((requires)) indicates otherwise.

(1) ("Abbreviations" (technical):

"CPR" means cardiopulmonary resuscitation;

"DE" means diatomaceous earth;

"F" means Fahrenheit;

"fps" means feet per second;

"gpm" means gallons per minute;

"mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available;

"ppm" means parts per million. See notation under mg/l for use;

"TU" means turbidity unit as measured by the nephelometric method.

(2) Acronyms:

(a) "ALTI" means Advanced Lifeguard Training International;

(b) "ANSI" means American National Standards Institute;

(c) "APHA" means American Public Health Association;

(d) "ARC" means American Red Cross;

(e) "ASA" means American Standards Association;

(f) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers;

(g) "ASME" means American Society of Mechanical Engineers;

(h) "ASTM" means American Society for Testing and Materials;

(i) "AWWA" means American Waterworks Association;

(j) "E&A" means Ellis and Associates;

(k) "CPSC" means U.S. Consumer Product Safety Commission;

(l) "EPA" means U.S. Environmental Protection Agency;

(m) "FINA" means Federation Internationale de Natation Amateur;

(n) "IAPMO" means International Association of Plumbing and Mechanical Officials;

(o) "NAUI" means National Association of Underwater Instructors;

(p) "NSF" means National Sanitation Foundation;

(q) "NSPI" means National Spa and Pool Institute;

(r) "PADI" means Professional Association of Diving Instructors;

(s) "UBC" means Uniform Building Code;

(t) "UL" means Underwriters' Laboratories;

(u) "WRF" means water recreation facility;

(v) "WRPA" means Washington Recreation and Parks Association;

(w) "WSDA" means Washington state department of agriculture; and

(x) "YMCA" means Young Men's Christian Association.

(3) Definitions:

"Anti entrapment system" means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets.) "ALTI" means Advanced Lifeguard Training International.

(2) "ANSI" means American National Standards Institute.

(3) "APHA" means American Public Health association.

(4) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with this chapter.

(5) "APSP" means Association of Pool and Spa Professionals.

(6) "ARC" means American Red Cross.

(7) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

("ASME A112.19.8 standard" means the ASME A112.19.8 2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a 2008 Addenda and the ASME A112.19.8b 2009 Addenda.)

(8) "ASA" means American Standards Association.

(9) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers.

(10) "ASTM" means American Society for Testing and Materials.

(11) "Attendant" means a person appointed by the owner or manager meeting the training requirements of this chapter who monitors activities and conditions for the purpose of ensuring bather safety.

(12) "AWWA" means American Waterworks Association.

(13) "Bathing beach" means a bathing place, together with buildings and appurtenances, on a natural pond, lake, stream, or other body of fresh or salt water that is open to the public for bathing by express permission of the owner, operated for a fee, or openly advertised as a place for bathing by the public.

(14) "Board" means the state board of health.

(15) "Branch line" means suction piping between a junction fitting and a suction outlet.

(16) "Commercial strength ammonia" means ammonia having a strength of twenty-six degrees Baume(?)

(17) "Communication system" means any combination of devices permitting the passage of messages between personnel and/or personnel and bathers. Systems can include but are not limited to two-way radios, hard wired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

(18) "Contaminant" means any physical, chemical, or biological substance present in the WRF water which may adversely affect the health or safety of the bather or the quality of the water.

(19) "CPR" means cardiopulmonary resuscitation.

(20) "CPSC" means U.S. Consumer Product Safety Commission.

(21) "Cross-connection" means any physical arrangement connecting:

(a) Potable water system directly or indirectly, with anything other than another potable water system; or

(b) WRF pool to any water source capable of contaminating either the WRF pool, its components, or potable water source as a result of backflow.

(22) "DE" means diatomaceous earth.

(23) "Department" means the Washington state department of health.

(24) "Deep water" means water greater than five feet in depth.

(25) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or pool decking intended for users to dive.

(26) "E&A" means Ellis and Associates.

(27) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW.

(28) "EPA" means U.S. Environmental Protection Agency.

(29) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

(30) "F" means Fahrenheit.

(31) "Fall zones" mean the areas under and around play toys where a person playing on them could fall. These areas should be free of obstacles or other equipment so that there's plenty of room. Basic guidelines include the following:

(a) Fall zones should extend a minimum of six feet in all directions from the perimeter of the play toy equipment.

(b) If the height of an adjacent play toy is thirty inches or more, the minimum distance between pieces of play equipment should be at least nine feet.

(32) "FINA" means Federation Internationale de Natation Amateur.

(33) "fps" means feet per second.

(34) "General use pool" means any swimming, spa, wading, or spray pool regulated by this chapter not meeting the definition of a "limited use pool."

(35) "gmp" means gallons per minute.

(36) "Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

(37) "IAPMO" means International Association of Plumbing and Mechanical Officials.

(38) "Illness or injury report" means the written record of all facts regarding an injury or illness associated with the WRF.

(39) "Innovative design feature" means a design feature, equipment, device, or operative procedure not specifically covered by these rules or chapter 246-262 WAC.

(40) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

(41) "Licensed medical practitioner" includes medical doctor, osteopath, chiropractor, naturopath, and medical therapist currently licensed in Washington state.

(42) "Lifeguard" means a person meeting the training requirements of these rules appointed by the owner or manager to maintain surveillance over the bathers on the deck or in the pool and to supervise bather safety.

(43) "Lifeguard station" means designated work station of a lifeguard.

(44) "Lifesaving equipment" means emergency equipment and barrier protection.

(45) "Lifesaving Society" means the organization in Canada that establishes training requirements and standards for lifeguard training.

(46) "Limited use pool" means:

(a) Any swimming, spa, wading, or spray pool regulated by this chapter at an apartment, boarding home, condominium, fraternity, home owners association, hotel, mobile home park, motel, recreational vehicle park, sorority or rental housing unit for the use of the persons living or residing at the facility and their resident's invited guests.

(b) When organized programs are provided at the facility (including, but not limited to, formal swimming or diving lessons, swim meets, or exercise classes), for users besides those specified under the limited use category, the pool facility shall be considered to be a general use pool during periods of such activity.

(47) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(48) "Main drain" means a submerged suction outlet for transferring water from a swimming pool, spa pool, or wading pool.

(49) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.

(50) "NAUI" means National Association of Underwater Instructors.

(51) "NSF" means National Sanitation Foundation.

(52) "NSPI" means National Spa and Pool Institute.

(53) "Outlet drain" means a drain for transferring water from a spray pool.

(54) "Owner" means a person owning and responsible for a WRF or their authorized agent.

(55) "PADI" means Professional Association of Diving Instructors.

(56) "Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.

(57) "Physical plant" refers to pool shell, piping, lighting, ventilation, locker rooms, chemical storage rooms, mechanical rooms, or other structural facility components

that are not readily modified. It does not include pumps, filters or disinfection systems.

(58) "Play toy" is a water feature added to a pool for use by bathers that provides activity or action that enhances the overall use of the water environment. Such feature may include, but not be limited to, fixed stationary features, inflatable or floatable equipment, or other equipment with the intent to invite bathers to play on or around the feature.

(59) "Pool" means swimming pool, wading pool, spray pool, or spa pool or the like.

(60) "ppm" means parts per million. See notation under mg/l for use.

(61) "Private club" means a group or organization requiring membership enrollment.

(62) "Radius of curvature" means the radius arc denoting the curved surface from the point of departure from the springline (vertical sidewall) of the pool to the pool bottom.

(63) "Response time" means time between bather distress and initiation of rescue assistance contact by a lifeguard in facilities providing lifeguards.

(64) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to water slides, wave pools, and water lagoons. These facilities are regulated by chapter 246-262 WAC.

(65) "Secretary" means the secretary of the department ((of health)).

(66) "Serious injury" means any injury:

(a) Requiring emergency service response where a person requires medical treatment as determined by the emergency medical response personnel; or

(b) Resulting in a person seeking medical attention at a medical facility, hospital emergency room or admittance to a hospital.

(67) "Shallow water" means water equal to or less than five feet in depth.

(68) "Shallow water lifeguard" means a person appointed by the owner or manager to supervise bather safety in water depths not exceeding five feet who meets the training requirements of this chapter.

(69) "Spa pool" means a pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest and the pool is not drained, cleaned, and refilled for each user. The spa pool may include, but not be limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles in any combination.

(70) "Spray pool" means a pool or artificially constructed depression for use by bathers in which water is sprayed, but is not allowed to pond in the bottom of the pool.

(71) "Springline" means the point where the pool wall breaks from vertical and begins its arc in the radius of curvature (for cove construction) to the bottom of the pool.

(72) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs.

(73) "Suction outlet" means a fitting, fitting assembly and related components including the sump or bulkhead fit-

ting, cover and hardware, that provides a localized low pressure area for the transfer of water from a water recreation facility. Types of suction outlets include main drains, equalizer line outlets, and submerged outlet drains.

(74) "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing and having a depth of two feet or more at any point and including all associated facilities.

(75) "Swim spa" means a type of spa pool used primarily for stationary swimming.

(76) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(77) "TU" means turbidity unit as measured by the nephelometric method.

(78) "Turnover time" means the minimum time necessary to circulate the entire volume of the pool facility through the treatment system.

(79) "UBC" means Uniform Building Code.

(80) "UL" means Underwriters' Laboratories.

(81) "Wading pool" means any artificial pool of water equal to or less than two feet deep and intended for wading purposes.

(82) "Walking surface" means any surface used as a direct access surface for a pool area and the walking surface's change room facilities where the user is barefoot.

(83) "Water treatment operator" means the appointed person operating the physical and mechanical equipment and performing related water quality monitoring and associated record keeping for proper operation of the physical facility.

(84) "Water recreation facility ((WRF))" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined under RCW 70.90.110 and regulated under chapter 246-262 WAC;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(85) "WRF" means water recreation facility.

(86) "WRPA" means Washington Recreation and Parks Association.

(87) "WSDA" means Washington state department of agriculture.

(88) "YMCA" means Young Men's Christian Association.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

WAC 246-260-031 General design, construction, and equipment for all WRF pool facilities. (See additional design and construction requirements for swimming pools in WAC 246-260-041, for spa pools in WAC 246-260-051 and 246-260-061, for wading pools in WAC 246-260-071, for

spray pools in WAC 246-260-081 and for specialty design conditions in WAC 246-260-091. See chapter 246-262 WAC for specific requirements for water park type features.)

(1) **Location:** Owners shall locate pools to minimize surface drainage and other potential sources of pollution from entering the pool.

(2) **Materials:** Owners shall use only structure and equipment materials that are nontoxic, durable, inert, and easily cleanable.

(3) **Walking surfaces:** Owners shall design and maintain walking surfaces:

(a) Sloping away from the pool or pools;

(b) Sloping a minimum of one-fourth inch per foot to drain;

(c) Having a nonslip finish;

(d) Not having an abrupt change in height of greater than one-half inch, a gap no greater than one-half inch in width, or a crumbling surface presenting a potential tripping hazard;

(e) Equipped with sufficient drains to prevent standing water; and

(f) Of easily cleanable, impervious finishes.

(4) **Barriers for new construction and remodeling:**

(a) Owners shall provide barriers to prevent unauthorized persons from gaining access to pools. Spray pool facilities without standing water are exempt from barrier requirements of this section.

(b) Barriers at limited use pools must be at least sixty inches high.

(c) Barriers at general use pools must be at least seventy-two inches high.

(d) Barriers, including windows, (see figures 031.1 and 031.2) may not:

(i) Allow passage of a four-inch diameter sphere; or

(ii) Have spaces between vertical members greater than a width of one and three-quarter inches if the distance between the tops of horizontal members are spaced less than forty-five inches apart.

(e) Solid barriers may not have indentations or protrusions, other than normal construction tolerances and masonry joints.

(f) Barriers must have self-closing, self-latching gates or doors that provide either:

(i) A mechanism that uses a continuously locked latch, coded lock or other equivalent access control system that always requires a key or code to enter pool area. If the latch is less than sixty inches from the ground, the barrier must have an eighteen-inch radius of solid material around the latch (see figure 031.2) to preclude a child on the outside of the barrier from reaching through the gate or barrier and opening the latch and entering the pool; or

(ii) A latch height of sixty inches or more from the ground.

(g) Restricted area service entrances are exempt from door or gate requirements provided that no public access is available.

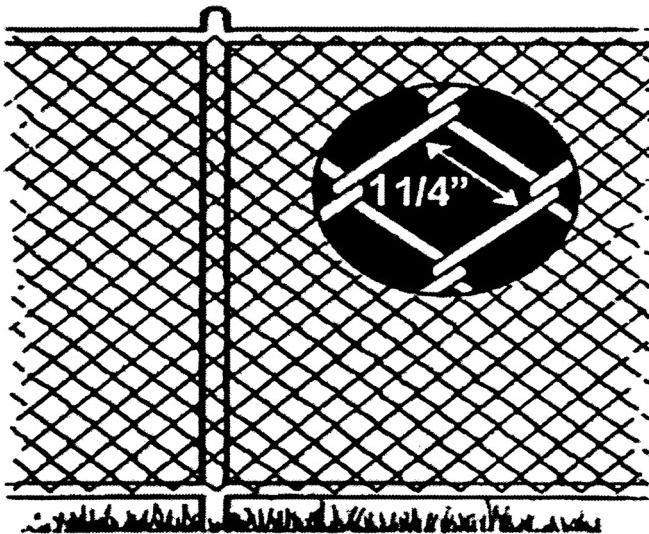
(h) Lifeguarded pools are not required to have a self-closing, self-latching gate during the period a pool is in use. Facility gates shall be closed and locked during nonuse periods.

(i) Barrier heights are measured on the side outside the pool enclosure area. Owners shall ensure that surrounding ground levels, structures, or landscaping do not reduce the effective height of the barrier.

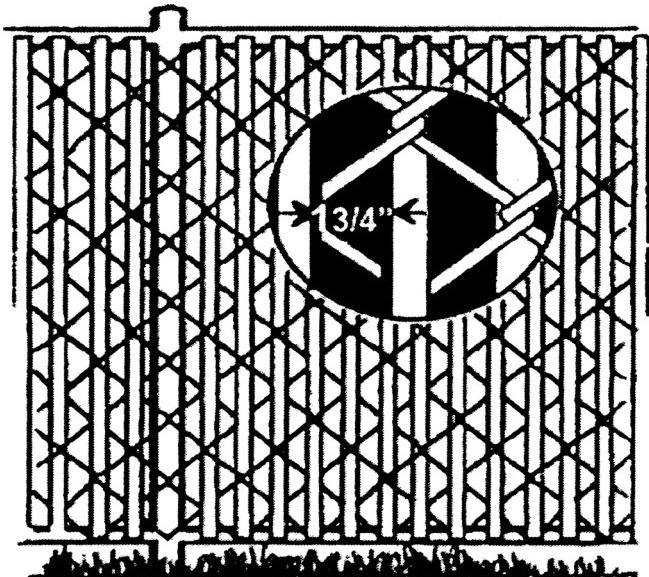
Figure 031.1
Barrier Construction Detail

(a). For a Chain Link Fence:

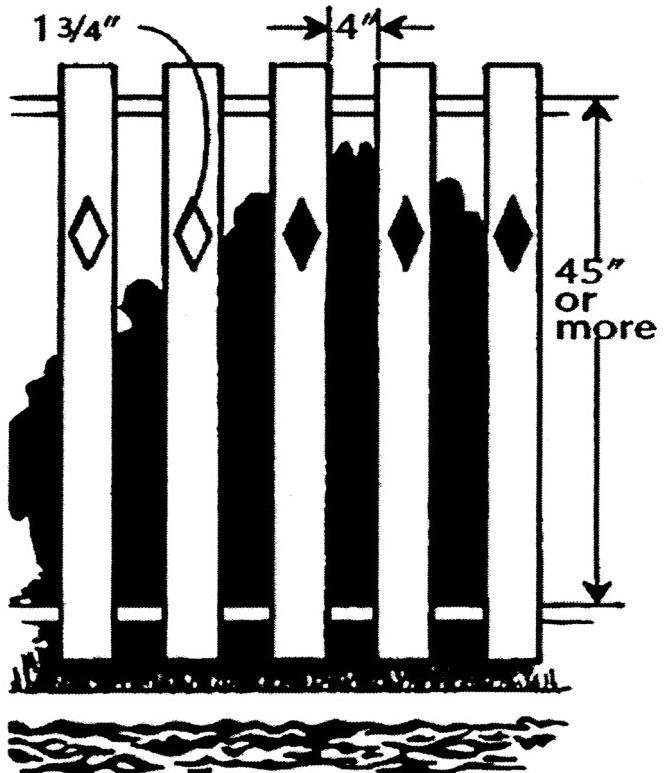
The mesh size shall not exceed 1 1/4 inches square.



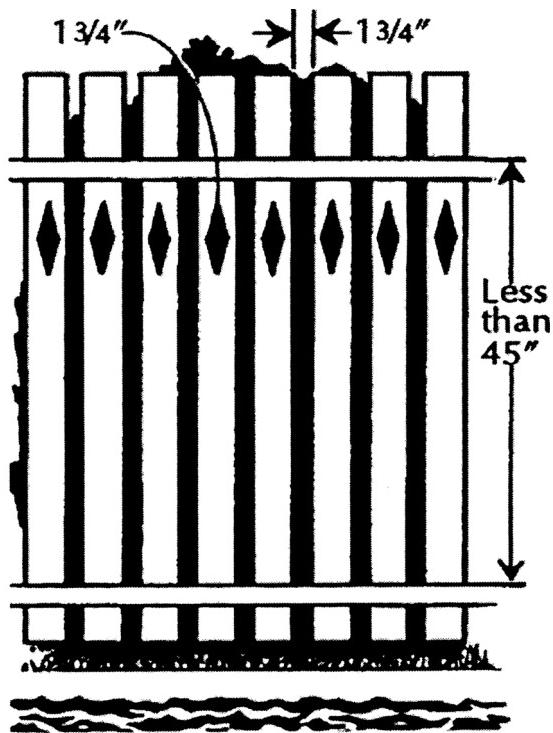
(b). When chain link exceeds 1 1/4 inches square, provide slats to reduce mesh openings to no more than 1 3/4 inches.



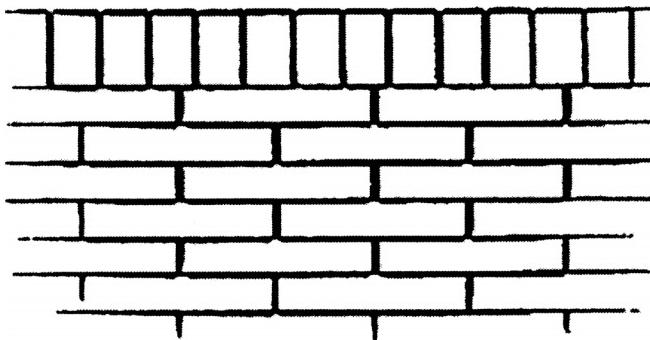
(c). Vertical Spacing: If tops of horizontal members are greater than 45 inches apart, vertical spacing shall not exceed 4 inches.



(d). Vertical Spacing: If tops of horizontal members are less than 45 inches apart, vertical spacing shall not exceed 1 3/4 inches.



(e). Solid Barrier: No indentations or protrusions shall be present, other than normal construction tolerances and masonry joints.



(f). Maximum Clearance shall not exceed 4 inches above grade.

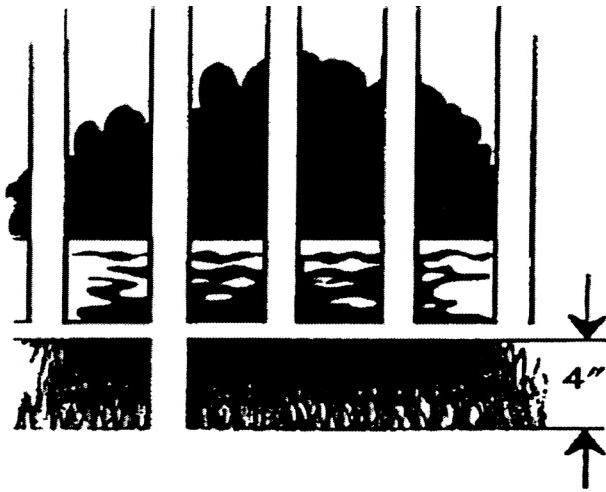
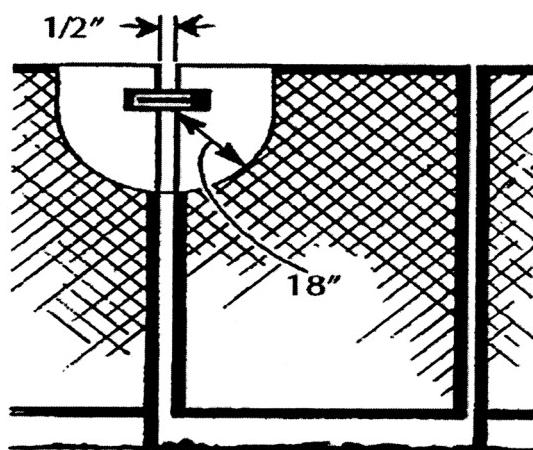


Figure 031.2 Gate and Latch Detail: When latch height is less than 60 inches from the ground, a continuously locked lock must be provided with an 18 inch radius of protection around the latch.



(5) Barriers for existing facilities: Before June 1, 2008, owners shall provide barriers for all pools conforming with subsection (4) of this section. Barrier modifications made prior to the compliance deadlines shall meet the requirements in subsection (4) of this section, at the time the modifications are made.

(6) Pool surface: Owners shall ensure pool surfaces are constructed and maintained to:

- (a) Have white or light color finish;
- (b) Not cause cutting, pinching, puncturing, entanglement, or abrasion hazard under casual contact; and

(c) Conform to ANSI/NSPI-1 2003 Standards for Public Swimming Pools or ANSI Standard NSPI-@-1999, American National Standard for Public Spas.

(7) Inlets: Owners shall provide pool inlets that are:

- (a) Submerged;
- (b) Located to produce uniform water and chemical circulation throughout the pool; and

(c) Located on the bottom of swimming and wading pools over twenty-five hundred square feet and spa pools greater than ten thousand gallons.

(8) Outlets:

(a) Except as provided in (f) and (g) of this subsection, owners shall provide pool outlets with:

(i) Overflow and main drain systems each designed to carry one hundred percent of the total recirculation filter flow;

(ii) Main drain piping systems designed to carry one hundred percent or more of total recirculation filter flow when a single pump is used or fifty percent or more of total recirculation filter flow when multiple pumps are used; and

(iii) Valving on main drain piping designed to provide required flow.

(b) Owners shall ensure that overflow outlets maintain a minimum of sixty percent of filter recirculation flow at all times.

(c) Overflow outlets must consist of an overflow channel on the perimeter of swimming pools twenty-five hundred square feet or more and spa pools ten thousand gallons or more, to promote uniform circulation and skimming action of the upper water layer with:

(i) A design preventing all matter entering the channel from returning to the pool;

(ii) Dimensions minimizing the hazard for bathers, such as catching arms or feet;

(iii) One one-hundredth of a foot slope per foot or more. However, adequate hydraulic justification from a designer to ensure the overflow system will meet (c)(v) of this subsection may be provided as an alternative;

(iv) Drains sufficiently spaced and sized to collect and remove overflow water to return line and filter, where applicable; and

(v) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow without flooding the overflow channel.

(d) Overflow outlets must consist of skimmers or overflow channels for pools less than twenty-five hundred square feet, or for spas under 10,000 gallons.

(i) Weirs provided in skimmers must have a normal operation flow rate of three to five gpm per inch of weir;

(ii) Skimmer equipment must be recessed in the pool wall so no part protrudes beyond the plane of the wall into the pool;

(iii) Skimmers must be equipped with a device, such as an equalizer line, to prevent air lock in the recirculation suction line. If equalizer lines are used, they must be protected with a suction outlet that conforms to the ((ASME A112.19.8)) suction fitting standard;

(iv) Skimmers must be equipped with a removable and cleanable screen designed to trap large solids;

(v) Skimmers shall operate continuously with a minimum displacement rate of fifteen gallons per bather in swimming pools, twenty gallons in spa pools, and seven gallons in wading pools.

(e) Main drains in all pools must:

(i) Be located at swimming and wading pool low points;

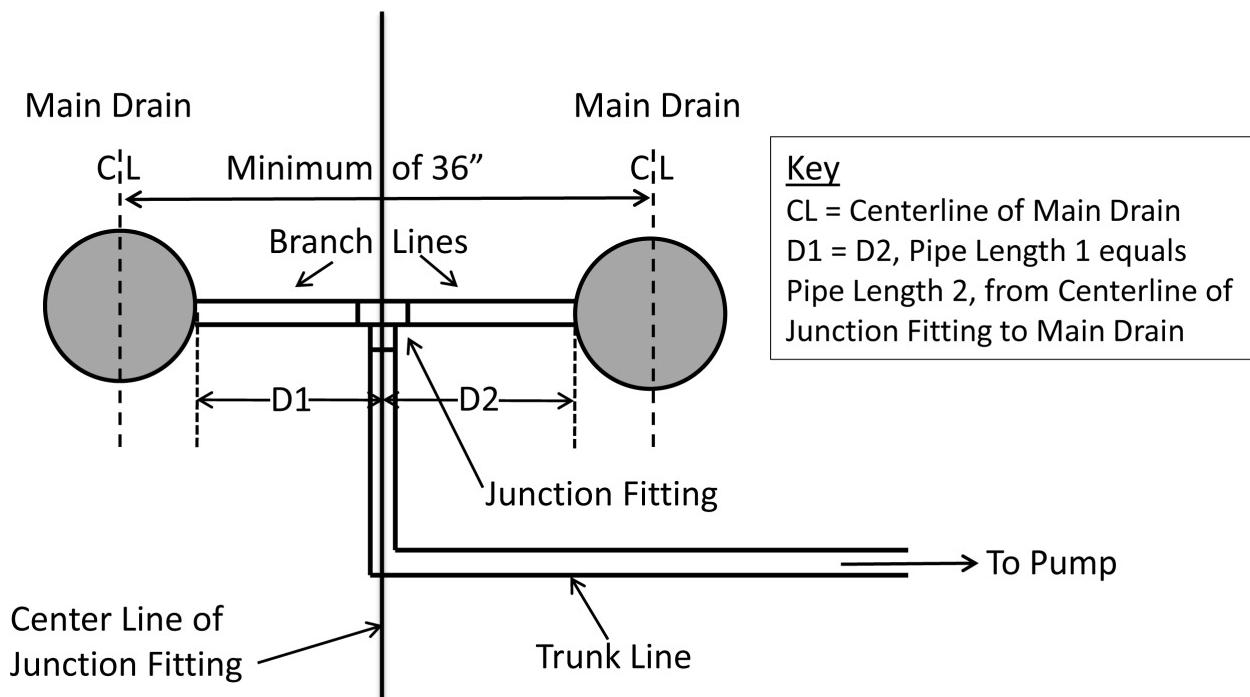
(ii) Have piping designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps up to the main drain outlet box;

(iii) Have covers on main drains with maximum flow of one and one-half feet per second;

(iv) Consist of two or more main drains for any pumped water recirculating system designed;

(A) Piping must be manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting (see Figure 031.3);

Figure 031.3
Main Drain Branch Line Piping Detail



(B) Main drains must be spaced at least three feet apart, measured between the centers of the drain covers;

(C) Main drains must conform to the ((ASME A112.19.8)) suction fitting standard;

(D) Multiple main drains must be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 031.4.

Table 031.4
Main Drain Flow Rating Requirements

	Number of Main Drains Per Recirculation System			
	2	3	4	5
Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.	100%	50%	33.3%	25%

(f) Existing water recreation facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(g) New water recreation facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-260-111 are met.

(9) **Pumps:** Owners shall provide and maintain recirculation pumps with adequate capacity to provide design flows for the entire operating and backwash cycles of the filter.

(10) **Strainers:** Owners shall provide hair and lint strainers for pumps that precede filters.

(11) Pool appurtenances:

(a) Owners shall ensure pools have:

(i) Handholds when the pool deck is greater than twelve inches above the water surface;

(ii) Stairs leading into spa pools;

(iii) Step risers on the exterior of the spa pool shall conform with UBC requirements for risers with nonslip tread finishes, when spas are elevated off the pool floor; and

(iv) Stairs, ladders, or stepholes for access at the shallow end of swimming pools.

(b) Owners shall ensure that stairs, when provided, meet the following construction requirements:

(i) Nonslip tread finish;

(ii) Contrasting color stair tread edges;

(iii) Placement recessed into the side of pools specifically designed for lap or competitive swimming;

(iv) Handrail having leading edges less than eighteen inches beyond and less than eight inches inside (horizontally) the vertical plane of the bottom riser;

(v) Each riser tread shall have a minimum unobstructed, tread depth of ten inches and minimum surface area each of two hundred forty inches;

(vi) Uniform riser heights of seven and one-half inches or less on general use swim pools fifteen hundred square feet or more and spa pools greater than forty feet in perimeter, except the bottom riser may be less than the uniform height; and

(vii) Uniform riser heights of ten inches or less for all other pools, except the bottom riser may be plus or minus two inches of the uniform height.

(c) Ladders or stepholes at swimming pools shall be:

(i) Spaced at a minimum of one for every seventy-five feet of swimming pool perimeter deeper than four feet;

(ii) Provided at both sides of the deep end of swim pools over thirty feet in width; and

(iii) Equipped with handrails.

(12) **Valves:** Owners shall provide valves to allow isolation and maintenance of equipment.

(13) **Balancing tanks:** Owners shall provide balancing tanks for pools designed with overflow channels. Balancing tanks must be of adequate size to prevent air lock in the pump suction line and have sufficient capacity to prevent flooding of the overflow channel.

(14) **Equipment and chemical storage rooms:** Owners shall provide enclosed, locked, lighted, vented rooms for mechanical equipment, with floors sloped to a floor drain and minimum access area three feet wide around equipment. Owners shall provide a separate chemical storage area or

room that conforms to manufacturer's requirements for each chemical used in the pool area.

(15) **Make-up water:** Owners shall ensure an adequate supply of make-up water with associated piping, for each pool:

(a) Sufficient to replace daily pool losses;

(b) From a supply conforming to chapter 246-290 WAC;

(c) Without cross connections; and

(d) If using a pool fill spout, the spout may not project greater than one inch into the space above the water surface and shall be shielded so as not to create a deck hazard.

(16) Filters:

(a) Owners shall equip pools with filtration equipment:

(i) Meeting the applicable standards of NSF (for commercial application) or equivalent;

(ii) With a rate of flow indicator and gauge(s) for monitoring backpressure on filter;

(iii) With a means of discharging filter backwash to waste with a sight glass in a manner not creating a cross connection or a public nuisance;

(iv) With a means to release air entering the filter tank for pressure filters.

(b) If cartridge filters are used, owners shall always possess an extra set of cartridges and may not use cartridge filters with bypass valves.

(17) Disinfection equipment:

(a) Owners shall provide disinfection equipment:

(i) Providing a continuous and effective disinfectant residual;

(ii) Using a disinfectant with an easily monitored residual;

(iii) Having a design feed rate providing effective disinfection levels for peak demand conditions; and

(iv) Conforming to NSF standard 50 if disinfection chemical is other than gas chlorine.

(b) If disinfection equipment has adjustable output rate chemical feed of liquid solutions, the equipment shall:

(i) Feed under positive pressure in the recirculation system;

(ii) Provide a means for dosage adjustment; and

(iii) If the disinfection equipment is above pool water surface level, have provisions to prevent disinfectant solution siphoning when equipment is turned off.

(c) Solid tablets or granules may not be placed in skimmer basket.

(d) Rooms holding chlorine gas equipment must:

(i) Be above ground level;

(ii) Be constructed so all openings or partitions with adjoining rooms are sealed;

(iii) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the pool facility;

(iv) Have door(s) opening only outward to the out-of-doors; and

(v) Have a sign on the door exterior reading **DANGER CHLORINE** in large enough letters to be read twenty-five feet away.

(e) Chlorine rooms must have mechanical exhausting ventilation that includes:

(i) Air inlets located as far as possible from fan intakes to promote good air circulation patterns;

- (ii) A minimum of one air change per minute in the chlorine room when fan is operating;
- (iii) A remote switch outside the room or a door-activated switch to turn on fan before entering;
- (iv) Suction for fan near the floor;
- (v) Exhaust vents located to prevent chlorine contaminated air from being drawn into supply air; and
- (vi) Screened chlorinator vents.
- (f) Gas chlorine systems must:
 - (i) Be vacuum injection type, with vacuum-actuated cylinder regulators;
 - (ii) Provide integral backflow and antisiphon protection at the injector;
 - (iii) Have taring (net weight of cylinder gas) scales for determining chlorine weight; and
 - (iv) Have a means for automatic shutoff when water flow is interrupted.
- (g) A self-contained breathing apparatus designed for use in chlorine atmospheres caused by chlorine leaks must be available in an area accessible to the operator outside the chlorine room. The apparatus must be maintained in accordance with department of labor and industry standards. If procedures are established for immediate evacuation and the owner has a written agreement with emergency service fire districts or other approved organizations within the area for promptly responding to chlorine leaks, then breathing protection is not required at the pool facility.
- (h) Chlorine gas cylinders must:
 - (i) Be stored only in designated chlorine rooms;
 - (ii) Have an approved valve-stem cylinder wrench on the valve stem to shut the system down in an emergency event;
 - (iii) Be properly secured to prevent tipping;
 - (iv) Be tagged to indicate cylinders are empty or full; and
 - (v) Not exceed one hundred fifty pounds tare weight per cylinder.
- (i) Owners shall ensure that chemical disinfectants are not hand-fed into pools actively in use. *Exception*, chemical disinfectants may be hand-fed on an emergency basis if no users are in the pool and the pool is tested to meet water quality standards before reentry.
- (j) If ozone is provided as a supplemental disinfection process:
 - (i) When ozone is produced by corona discharge method, the area where the ozone is produced shall meet the requirements of (e) of this subsection, unless field tests demonstrate no hazardous off-gassing of product;
 - (ii) When ozone is produced by ultraviolet light, it may be allowed in the mechanical room provided there are no levels of off-gassing exceeding 0.05 ppm;
 - (iii) Provide an ozone detector and alarm with corona discharge ozone generators;
 - (iv) Provide sufficient contact chambers to prevent excess levels of ozone from entering the pool water; and
 - (v) Testing equipment must be provided to monitor levels in the water and the atmosphere immediately above the water and the room where the ozone is produced.
- (k) If copper or copper/silver is provided as a supplemental disinfection process:
 - (i) The output rate and method of controlling process levels into the pool facility must be provided;

- (ii) The system shall not have a detrimental effect on maintaining proper turnover rates for the pool; and
- (iii) Testing equipment provided to monitor levels of copper and silver in the pool water.

(18) Chemical feeding equipment for pH control: Owners shall provide chemical feed equipment for pH control, with a means of automatic shutoff if water flow is interrupted, for:

- (a) Swimming pools fifty thousand gallons or greater;
- (b) Spa pools ten thousand gallons or greater; and
- (c) All pools treated with caustic soda or carbon dioxide.

(19) Ventilation: Owners shall provide adequate ventilation (in conformance with ASHRAE standards for pools and decks) to maintain air quality and to prevent moisture buildup in indoor areas. Design considerations must include maintaining negative pressure in the pool and deck area; providing adequate total airflow for acceptable air distribution; and preventing short-circuiting of fresh air return to exhaust.

(20) Locker room and dressing rooms:

(a) Owners shall provide general use pool facilities with locker rooms and dressing rooms having:

- (i) Separate facilities for each gender constructed to block line of sight into locker rooms;
- (ii) Water impervious nonslip floors properly sloped to drains to prevent standing water;
- (iii) Easily cleanable walls, lockers, and benches (if provided);
- (iv) Junctions between walls and floors coved for ease of cleaning; and
- (v) Properly anchored lockers, (if provided), to prevent tipping.

(b) Owners shall provide limited use pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located more than one-quarter mile from any served living units.

(c) Owners shall provide general use recirculating spray pool facilities with locker or dressing rooms meeting the requirements of (a) of this subsection if the pool facilities are located indoors.

(21) Restrooms, shower rooms, and plumbing fixtures:

(a) Owners shall provide general use pool facilities with restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.5 of this section (swim and wading pool bathing loads and spa bather capacity are additive for determining total bather load). The pool facility design shall provide users easy access to restroom and shower facilities with minimum nonuser cross traffic.

(b) Owners shall provide general use pool facilities with:

(i) Hose bibs with vacuum breakers around pool decks at a maximum spacing of one hundred fifty feet; accessible to each locker room; and within equipment room at facilities fifteen hundred square feet or more;

(ii) A janitor's sink at indoor facilities with a pool of fifteen hundred square feet or more; and

(iii) An operable drinking fountain conforming to ASA requirements at facilities with a pool fifteen hundred square feet or more.

(c) Owners shall provide limited use pool facilities with:

(i) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.5 of this section, if bathing load exceeds eighty persons;

(ii) Restroom and shower room facilities having plumbing fixture types and numbers as described in Table 031.6 of this section, if bathing load is eighty persons or less;

(iii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet;

(iv) A hose bib accessible to each locker room; and

(v) A hose bib within each equipment room at facilities with a pool of fifteen hundred square feet or more.

Table 031.5

Restroom Minimum Requirements* for General Use Pools
(Includes swimming, spa, and wading pools**)

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
Toilets up to 120	1/60	1/40
From 121-360	1/80	1/60
Over 360 add	1/150	1/100
Urinal up to 120	1/60	N/A

Amount of Fixtures Required for Occupancy Load by Sex		
TYPE OF FIXTURES	MALE	FEMALE
From 121-360	1/80	N/A
From 360 add	1/150	N/A
Showers up to 120	1/40	1/40
From 121-360	1/60	1/60
Over 360 add	1/100	1/100
Sinks up to 200	1/100	1/100
From 201-400	1/200	1/200
Over 400 add	1/400	1/400
Diaper changing station	1	1

* If sufficient supporting documentation is provided, restroom fixture numbers may be adjusted between the genders based on proposed use of the facility. (E.g., if the designer has experience and justification based on similar type facilities indicating that providing one additional shower for the women and one less for men would provide a sufficient number of fixtures to meet demands, this may be allowed.)

** If a general use spa or wading pool is the only pool at the facility, then a minimum of only one toilet, shower, and sink is required for each gender.

Table 031.6
Restroom Minimum Requirements for Limited Use Pools
(Includes swimming, spa, and wading pools.)

POOLS WITH:	TOILETS	SHOWERS	SINKS	DRESSING ROOMS	DIAPER CHANGING STATION
Living units*within 100 feet and less than three stories	-	-	-	-	-
Living units > 100 feet but < 500 feet and less than 3 stories	1	1**	1	-	1
Living units within 1/4 mile and/or with three or more stories	1	1	1	-	1
Living units greater than 1/4 mile	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)	1(M) 1(F)

* "Living units" means all the units the facility serves.

** A shower is required only if a spa is present.

(d) Owners shall provide general use recirculating spray pool facilities with:

(i) Separate restroom facilities for each sex containing at least one toilet and handwashing sink;

(ii) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(iii) Additional plumbing fixtures, if indoors, conforming to the requirements for general use pools described in Table 031.5 of this section.

(e) Owners shall provide limited use recirculating spray pool facilities with:

(i) Hose bibs around pool decks at a maximum spacing of one hundred fifty feet; and

(ii) A restroom facility containing at least one toilet and one handwashing sink, if living units served are farther than one hundred feet away from the main pool.

(f) Restroom facilities must be located convenient to, and no further than one hundred feet away from, the main pool. They must have flush toilets provided with toilet tissue in dispensers and handwashing sinks including:

(i) Hot and cold or tempered water delivered through a mixing faucet with a maximum temperature of one hundred twenty degrees Fahrenheit;

(ii) Single service soap in a nonglass dispenser;

(iii) Single service towels or electric hand dryer; and

(iv) A minimum running water cycle of at least ten seconds if the faucets have self-closing valves.

(g) Shower facilities must be located convenient to, and no more than one hundred feet away from, the main pool. The facilities must have:

(i) A design allowing a full-body shower in the nude;

(ii) A design providing an enclosure confining water to the shower area;

(iii) Nonslip floor impervious to water with sufficient drains to prevent water from standing within the shower areas;

(iv) Running water delivered at a temperature between ninety degrees and one hundred twenty degrees Fahrenheit;

(v) Single service soap in a nonglass dispenser; and

(vi) Wall surfaces impervious to water up to shower head height.

(h) If owners limit the number of bathers within their facility and post and enforce the maximum bather load, owners may base the number of required plumbing fixtures on the posted maximum bather load.

(i) Owners shall dispose of all wastewater in a manner approved by the local health officer.

(22) **Diaper changing stations:** Owners shall provide a diaper changing station, including a handwashing sink conforming to the requirements in subsection (21)(f) of this section, accessible to all bathers, if children in diapers are allowed in the pool facility and the facility is:

(a) A general use pool facility; or

(b) A limited use pool facility located more than one hundred feet away from living units served.

(23) **Lighting:** Owners shall design and maintain pool facility lighting to a minimum level as described in Table 031.7. Sufficient overhead and underwater lighting shall be maintained to clearly see the bottom of the pool at all times pool is in use. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

Table 031.7*

Minimum Lighting Level Required at Water Recreation Facilities.

Location	Minimum Lighting Level
Indoor pool surface	30 foot candles
Outdoor pool surface*	10 foot candles
Pool Decks	10 foot candles
Locker rooms and mechanical rooms	20 foot candles

* Outdoor pool facilities, which are used in daylight hours only (before dusk) are not required to meet this standard.

(24) **Flow-through pools:** Flow-through pools may qualify for exceptions to recirculation if:

(a) Water supply is sufficient to provide the same turnover period specified for recirculation pools;

(b) The source water supply meets acceptable quality requirements and is subject to a disinfection method as described under WAC 246-260-111(3);

(c) The introduction of fresh treated pool water is accomplished by the same type of inlet and outlet design required for recirculation pools; and

(d) The pool water quality complies with WAC 246-260-111.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

WAC 246-260-081 Spray pool design, construction, and equipment. For more general design and construction requirements that pertain to all pools, see WAC 246-260-031.

(1) **Walking surface.** A minimum four-foot wide walking surface shall extend around the perimeter of a spray feature sufficient that the spray will not exceed the walkway area in normal conditions including light wind conditions.

(2) **Pool structure.** Owners shall ensure each spray pool has:

(a) Pool surfaces with nonslip finishes impervious to water;

(b) Uniform pool floor slopes not exceeding one foot of a slope for every twelve feet of horizontal floor length;

(c) A source of water for the spray feature from an approved potable water supply;

(d) Water drained to waste disposed in a manner approved by local authorities or the department after use in the spray pool, unless it is recirculated with approved treatment as described in WAC 246-260-031; and

(e) The entire volume of water circulated through an approved treatment system every thirty minutes or less if water is recirculated.

(3) **Inlets.** Owners shall ensure spray nozzles at each spray pool are designed and maintained to not inflict physical damage to bathers. Design and construction shall include evaluation of forces of the spray nozzle including velocity, pressure and total force in proximity to bathers' eyes and other body orifices.

(4) Outlets.

(a) Owners shall ensure outlet drains are designed and maintained to provide sufficient capacity to prohibit water accumulation in each spray pool.

(b) Piping must be designed so velocity in piping assuming one hundred percent of the pump recirculation flow does not exceed six fps between the pump and the outlet drain.

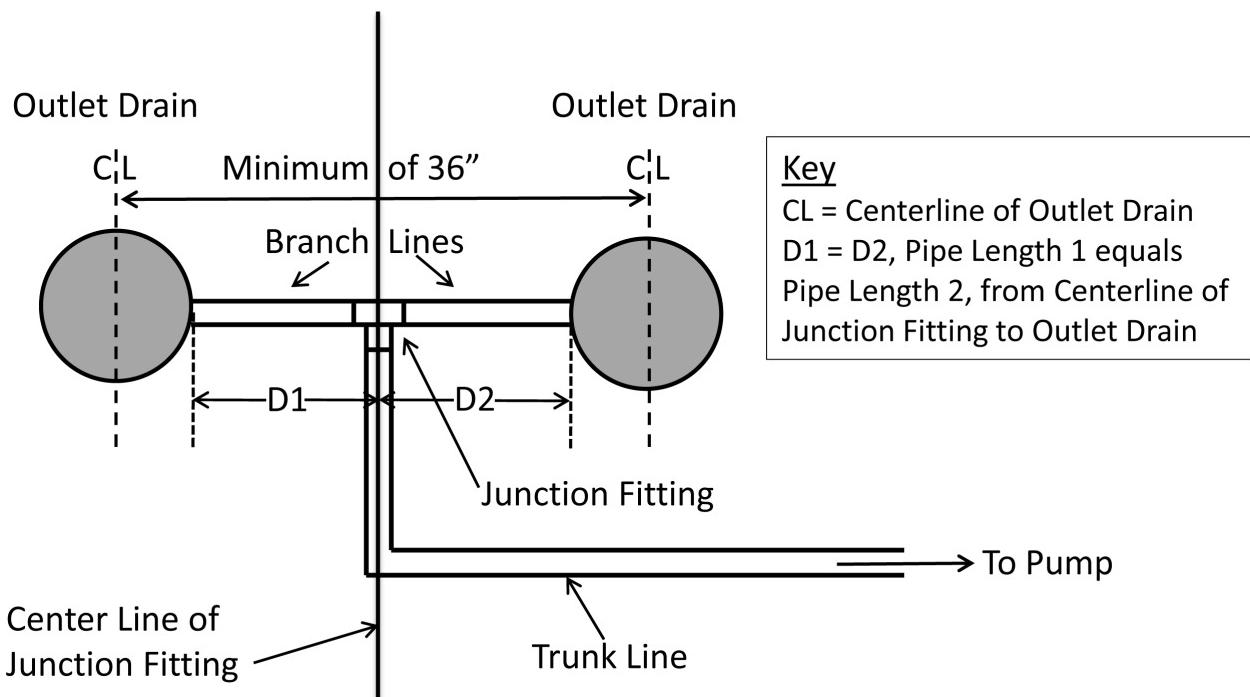
(c) Each spray pool must have two or more outlet drains that:

(i) Are located at the low point of the pool;

(ii) Are located at least three feet apart, measured between the centers of the drain covers; and

(iii) Are manifolded with junction fittings placed in the middle of branch line piping between outlet drains, so that the length of branch line piping is equal on each side of the junction fitting, see Figure 081.1;

Figure 081.1
Outlet Drain Branch Line Piping Detail



(iv) Have drain covers removable only with specific tools.

(d) Multiple outlet drains must be designed so that if one outlet drain becomes blocked, the remaining outlet drains are rated to at least one hundred percent of the maximum pump flow; see Table 081.1.

Table 081.1
Outlet Drain Flow Rating Requirements

	Number of Outlet Drains per Recirculation System			
	2	3	4	5
Outlet drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of outlet drains.	100%	50%	33.3%	25%

(e) Outlet drains that are accessible to pool users and submerged must:

(i) Conform to the ((ASME A112.19.8)) suction fitting standard; and

(ii) Have a maximum flow of one and one-half feet per second through the cover.

(f) Outlet drains that are accessible to pool users and not submerged must have:

(i) Openings that prevent the passage of a sphere over one-half inch in diameter; and

(ii) Drain covers that withstand forces of users.

(5) **Emergency equipment.** No later than June 1, 2008, owners of existing pools with single main drains shall install emergency equipment to shut off all pumps hooked to the recirculation lines for the pools. This emergency equipment must be placed within twenty feet of the pool and marked with an emergency shutoff sign. The shutoff switch must include an audible alarm which can be heard by those in the area, or the switch must have an alarm that goes to a point where staff is always present during the periods the pool is open.

(a) Pools that include dual main drains meeting the requirements of this section, or other acceptable methods of providing equivalent protection to the emergency shutoff switch, are exempt from this requirement.

(b) The owner shall check the shutoff switch at least twice annually to determine it is properly operating.

(c) The department will develop a guidance document to aid owners and designers in potential options to the emergency shutoff switch and audible alarm.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

WAC 246-262-010 Definitions, abbreviations, and acronyms. The definitions in this section apply throughout this chapter unless the context clearly ((requires)) indicates otherwise.

(1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, department of labor and industries, the U.S. Bureau of Mines, or fire services training program.

(2) "ANSI" means American National Standard Institute.

(3) ((~~Anti entrapment system~~) means a device or system designed to prevent entrapment by pool or spa single main drains or single equalizer line outlets, including:

(a) Safety vacuum release system (SVRS) that ceases operation of the pump, reverses the circulation flow, or otherwise provides a vacuum release at a suction outlet when a blockage is detected, that has been tested by an independent third party and found to conform to ASME/ANSI standard A112.19.17 or ASTM standard F2387;

(b) Suction limiting vent system with a tamper resistant atmospheric opening;

(c) Gravity drainage system that utilizes a collector or balancing tank; and

(d) Drain disablement that eliminates the use of suction outlets;

((4)) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with chapter 246-262 WAC.

((5)) (4) "ARC" means American Red Cross.

((6)) (5) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.

((7)) "ASME" means the American Society of Mechanical Engineers;

(8) "ASME A112.19.8 standard" means the ASME A112.19.8-2007 Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs standard and the ASME A112.19.8a-2008 Addenda and the ASME A112.19.8b-2009 Addenda)) (6) "APSP" means Association of Pool and Spa Professionals.

((9)) (7) "ASTM" means American Society for Testing Material.

((10)) (8) "Attendant" means a person trained to operate an attraction and control the users in a safe orderly manner.

((11)) (9) "Attraction or ride" means any of the specific types of recreational facilities involving partial or total immersion or intentional contact with the water designated for public recreational use.

((12)) (10) "Biomechanics" means the study of the human body as a system operating under the laws of Newtonian mechanics and the biological laws of life.

((13)) (11) "Board" means the state board of health.

((14)) (12) "Boogie or mini-surf board" means any semirigid device used in a wave pool for flotation or as a riding device.

((15)) (13) "Branch line" means suction piping between a junction fitting and a suction outlet.

((16)) (14) "Centerline" means the path defined by geometric midpoints of a component or structure, generally used in consideration of the slide path in flume rides.

((17)) (15) "CNCA" means Council for National Cooperation in Aquatics.

((18)) (16) "Communication system" means any combination of devices permitting the passage of or exchange of

messages between park operating personnel and between operating personnel and users. Systems can include, but are not limited to, two-way radios, hardwired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.

((19)) (17) "Contaminant" means any physical, chemical or biological substance present in the RWCF water which may adversely affect the health or safety of the user and/or the quality of the water.

((20)) (18) "Cross-connection" means any physical arrangement connecting:

(a) A potable water system directly or indirectly, with anything other than another potable water system; or

(b) A RWCF to any potable or nonpotable water source capable of contaminating either the RWCF or potable water source as a result of backflow.

((21)) (19) "Department" means the Washington state department of health.

((22)) (20) "Discharge section" means the component or components making up the exit of the water slide, water tube, inner tube ride, speed slide, ramp slide, drop slide or drop tube, or kiddie flume. These components are the elements controlling the final direction and speed of the user.

((23)) (21) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or attraction segment where users enter above pool water level.

((24)) (22) "Drop slide or drop tube ride" means a sloped trough, chute, or tube exiting the user above the pool operating water level.

((25)) (23) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW in Washington state.

((26)) (24) "Entry access points" means the areas where users enter an attraction.

((27)) (25) "Entry rate" means the frequency at which users are permitted access to the attraction.

((28)) (26) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.

((29)) (27) "Ergonomics" means a multidisciplinary activity dealing with the interactions between humans and their environment plus the traditional environmental elements atmosphere, heat, light, and sound, as well as objects with which the user comes in contact.

((30)) (28) "FINA" means Federation Internationale de Natation ((Amateur [Amateur])) Amateur.

((31)) (29) "Flume or tube entry" means the area at which users enter a water slide, water tube, inner tube ride, speed slide, drop slide, drop tube, or kiddie flume.

((32)) (30) "fps" means feet per second.

((33)) (31) "gpm" means gallons per minute.

((34)) (32) "IAAPA" means International Association of Amusement Parks and Attractions.

((35)) (33) "Injury or illness report" means the written record of all facts regarding an injury or illness associated with the RWCF.

((36)) (34) "Inner tube ride" means an attraction where users ride inner tube-like devices through a series of chutes, channels, flumes, and pools.

((37)) (35) "Innovative recreational water contact facility" means any type of RWCF currently unregulated.

((38)) (36) "Intermediate pool" means any pool between the entry and exit pools in attraction using a series of pools.

((39)) (37) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

((40)) (38) "Kiddie flume or tube attraction" means a flume, chute, or tube designated for and restricted to use by small children.

((41)) (39) "Lifeguard" means an individual currently certified by red cross in advance lifesaving or lifeguard training, or YMCA senior lifesaver, or equivalent certification through the royal Canadian lifeguard services.

((42)) (40) "Lifeguard station" means the designated work station of the lifeguard.

((43)) (41) "Local health officer" means the health office of the city, county, or city-county department or district or a representative authorized by the local health officer.

((44)) (42) "Main drain" means a submerged suction outlet for transferring water from a recreational water contact facility.

((45)) (43) "mg/l" means milligrams per liter.

((46)) (44) "Multiactivity pool" means a pool with more than one type of attraction (i.e., an adult activity pool with a series of tubes, chutes, cable rides, etc., intended for use by individuals with specific swimming abilities).

((47)) (45) "NSF" means National Sanitation Foundation.

((48)) (46) "NSPI" means National Spa and Pool Institute.

((49)) (47) "Operating levels" means water levels maintained within attractions during use for proper operation of facility and for controlling safety and sanitation.

((50)) (48) "Operations" means all aspects of a RWCF, which must be controlled to make the facility safe, healthy, and usable for the purpose intended.

((51)) (49) "Owner" means a person owning and responsible for a RWCF or authorized agent.

((52)) (50) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

((53)) (51) "Ponding" means a condition where water fails to drain from walking surfaces.

((54)) (52) "ppm" means parts per million.

((55)) (53) "Primary zone of visual coverage" means the area assigned to a lifeguard or attendant for primary visual surveillance of user activity.

((56)) (54) "Radius of curvature" means the radius arc which denotes the curved surface from the point of departure from the vertical sidewall (springline) of the pool to the pool bottom.

((57)) (55) "Ramp slide" means a slide allowing one or more users to slide in unison down a straight incline to a run-out or a receiving pool.

((58)) (56) "Recirculation filter water" means water which is recirculated by the RWCF for treatment purposes, i.e., filtration and disinfection.

((59)) (57) "Response time" means elapsed time between bather distress and initiation of rescue assistance by a lifeguard (or attendant where applicable).

((60)) (58) "RWCF" means recreational water contact facility which is an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water and includes, but is not limited to, water slides, wave pools, and water lagoons.

((61)) (59) "Secretary" means the secretary of the department ((~~of health~~)).

((62)) (60) "Serious injury" means any injury requiring admission to a hospital.

((63)) (61) "Speed slide or speed tube" means a sloped trough, flume, tube, or roller track having long straight and/or steep drops where users sustain speeds of twenty miles per hour or more.

((64)) (62) "Springline" means the point from which the pool wall breaks from vertical and begins its arc in the radius of curvature (for coved construction) to the bottom of the pool.

((65)) (63) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs.

(64) "Suction outlet" means a fitting; fitting assembly and related components, including the sump or bulkhead fitting, cover, and hardware that provides a localized low pressure area for the transfer of water from a recreational water contact facility. Types of suction outlets include main drains and equalizer line outlets.

((66)) (65) "Surfboard" means a rigid device used in a wave pool for riding.

((67)) (66) "Tail coverage" means providing insurance coverage for a given period of time for discovery of claims made after the policy term for "claims made" type of insurance.

((68)) (67) "Total turnover" means the time it takes for the pool attraction water volume to be recirculated as a sum of the flows from treatment turnover and attraction recirculation systems turnover.

((69)) (68) "Treatment turnover" means the minimum time necessary to circulate the entire attraction water volume through the recirculation filter system.

((70)) (69) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

((71)) (70) "T.U." means turbidity unit as measured by the nephelometric method.

((72)) (71) "Wading activity pool" means a pool or area less than twenty-four inches in total water depth with activities intended for younger children.

((73)) (72) "Walking surface" means any direct access surface to the attractions or change rooms where the user will be in bare feet. Areas set aside for picnicking, sunbathing, and lounging are excluded.

((74)) (73) "Water slide or water tube" means a sloped trough-like flume or tube structure of varying slope and direction using water as a lubricant and/or method of regulating the rider speed.

((75)) (74) "Water treatment operator" means the person appointed to operate the mechanical equipment and perform related water quality monitoring for proper operation of the physical facility.

((76)) (75) "Wave pool" means a recreational pool producing waves which usually begin at the deep end and proceed toward and dissipate at the shallow end.

((77)) (76) "WWA" means World Waterpark Association.

AMENDATORY SECTION (Amending WSR 10-20-131, filed 10/5/10, effective 11/5/10)

WAC 246-262-060 General design, construction, and equipment. (1) Owners shall locate RWCFs to:

(a) Minimize pollution by dust, smoke, soot, and other undesirable substances;

(b) Eliminate pollution from surrounding surface drainage; and

(c) Ensure pools within the RWCF are more than fifteen feet from any structure, object, or land formation (i.e., pump-house, tree, etc.), which would provide a user with the opportunity to jump from such a structure into the pool. This does not include any barriers provided to prevent unauthorized access to pool or segments of attractions which enter pool.

(2) Owners shall use only materials in the structure and equipment which are nontoxic, durable, inert, impervious to water, and easily cleaned.

(3) Owners shall design and maintain walking surfaces which are:

(a) Sloped a minimum one-fourth inch per foot;

(b) Of a nonslip finish;

(c) Equipped with sufficient drains to prevent standing water;

(d) Free of resilient coverings, e.g., carpeting; and

(e) At least four feet in width.

(4) Owners shall provide adequate barrier protection to prevent unauthorized access including:

(a) In outdoor facilities, a barrier six feet or more in height with:

(i) Openings, holes, or gaps not to exceed four inches except openings protected by gates or doors; and

(ii) Lockable gates and entrances either regulated during periods of use or provided with a self-closing, self-latching mechanism a minimum of forty-two inches from the ground.

(b) In indoor facilities, suitable barriers to prevent access by unauthorized individuals or pool access by unattended small children.

(5) Owners shall ensure that pools:

(a) Comply with all provisions of chapter 246-260 WAC where pool facilities are a separate attraction;

(b) Have surfaces with:

(i) Materials complying with subsection (2) of this section;

(ii) Watertight and nonabrasive construction;

(iii) Nonslip finish where users are walking; and

(iv) White or light color finish not obscuring the view of objects or surfaces.

(c) Are dimensionally designed to provide for the safety of the user and circulation of the water including, but not limited to:

(i) Absence of protrusions, extensions, means of entanglement, or other obstruction which can cause entrapment or injury;

(ii) Construction tolerances conforming with current ANSI public pool standards;

(iii) Uniform pool floor slopes as follows:

(A) Not exceeding one foot of drop in seven feet of run for pools serving as landing or exiting pools, where total water depth is less than forty-eight inches; and

(B) Providing a maximum slope of one foot of drop in twelve feet of run up to a depth of five and one-half feet in pools where users enter and participate in extended activities.

(iv) Vertical walls for a minimum distance noted in Table 4 of this section, which may be curved (not to exceed allowable radius) to join the floor.

(A) Vertical means walls not greater than eleven degrees from plumb.

(B) Coving or portion of the side wall of a diving area in the pool shall conform as described in subsection (5)(c)(vi) of this section.

(C) In new construction or alterations to existing construction, ledges are prohibited.

(D) Requirements in subsection (5)(c) of this section do not apply to spas.

(v) A maximum intrusion beyond the vertical (as defined in subsection (5)(c)(iv)(A) of this section) with any configuration not to exceed a transitional radius from wall to floor where floor slopes join walls and which:

(A) Has its center of radius no less than the minimum vertical depth specified in Table 4 of this section below the water level;

(B) Has arc of radius tangent to the wall; and

(C) Has a maximum radius of coving (or any intrusion into the pool wall/floor interface) determined by subtracting the vertical wall depth from the total pool depth.

TABLE 4
MAXIMUM RADIUS COVING OR POOL INTRUSION
DIMENSIONS BETWEEN POOL FLOOR AND WALL*

Pool Depth	2'0"	2'6"	3'0"	3'6"	4'0"	4'6"	5'0"	>5'0"
Minimum Slide Wall								
Vertical Depth	1'6"	1'10"	2'2"	2'6"	2'10"	3'2"	3'6"	>3'6"
Maximum Radius								
of Curvature	6"	8"	10"	12"	1'2"	1'4"	1'6"	**Maximum radius equals pool depth minus the vertical wall depth

Note:

* For pool depths which fall between the depths listed, values can be interpolated.

** Radius of coving cannot intrude into pool within diving envelope or deep water entry area for attractions entering above pool water level.

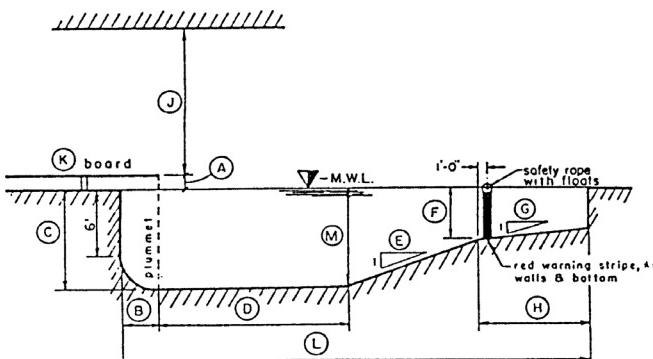
(vi) Provision of diving envelopes in pools or areas of pools designated for diving activities to include:

(A) A diving envelope of no less than the CNCA standard configuration* noted in Figure 1 of this section in areas where user would enter from deck level, diving board, or platform at a height of less than one-half meter (twenty inches).

Note: *This requirement is based on a standard described in CNCA publication "Swimming Pools: a Guide to their Planning, Design, and Operation" 1987. Fourth edition. Human Kinetics Publisher, Inc., Champaign, Illinois. Figure 8.1

FIGURE 1:

Minimum dimensions for pools with provision for diving from deck level or providing boards or platforms at a height less than one-half meter.



Dimension	Minimum	Preferred or Maximum
A Height of board above water	20 in.	
B Board overhang	2 ft 6 in.	3 ft
C Depth of water at plummet	9 ft	10 ft*
D Distance from plummet to start of upslope	16 ft	18 ft*
E Inclination of upslope of bottom		1:3
F Depth of water at breakpoint	4 ft 6 in.	

Dimension	Minimum	Preferred or Maximum
G Slope of bottom in shallow portion of pool	1:12	1:15*
H Length of shallow section of pool	8 ft	14 ft*
I Distance to any overhead structure	13 ft	15 ft*
K Board length		12 ft
L Length of pool	40 ft	50 ft*
M Dimension not less than C minus	6 in.	

Note: * Values with asterisks are not to be considered as maximums.

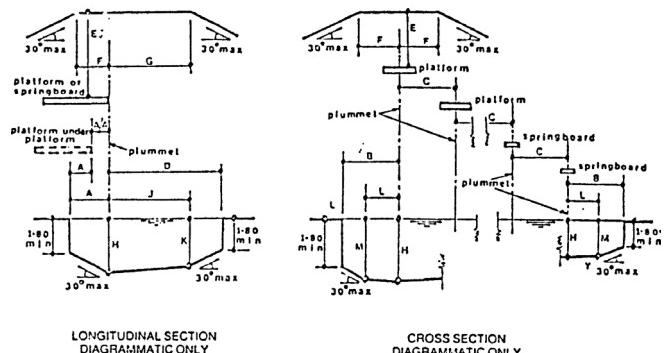
** Warning stripe at break point may be of any contrasting color.

(B) A diving envelope of no less than the FINA standard configuration** noted in Figure 2 of this section in areas where user would enter from diving board or platform at a height of one-half meter (twenty inches) or greater.

Note: **This requirement is based on a standard described in FINA publication "FINA Handbook - 1986-1988." Constitution and rules governing swimming, diving, water polo, and synchronized swimming, 1986-1988. Edited by E. Allen Harvey, Vancouver, Canada VGN 3R6, Section D, pp. 114-115.

FIGURE 2:

Minimum dimensions for pools with boards or platforms at a height of one-half meter or more.



	Dimensions	SPRINGBOARD				PLATFORM							
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres	
FINA	are in Metres	4.80		4.80		4.50		5.00		6.00		6.00	
DIMENSIONS FOR	LENGTH												
DIVING FACILITIES	WIDTH	0.50		0.50		0.60		1.50		1.50		1.50	
Revised to 1st Jan 1987	HEIGHT	1.00		3.00		0.60-1.00		2.60-3.00		5.00		7.50	
	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ	VERT	HORIZ
A From plummet BACK TO POOL WALL	DESIGNATION	A-1		A-3		A-1P1		A-3P1		A-5		A-7.5	
	MINIMUM	1.80		1.80		0.75		1.25		1.25		1.50	
A/A From plummet BACK TO PLATFORM Plummets directly below	DESIGNATION								AA5/1		AA7.5/3/1		AA10/5/3/1
	MINIMUM								1.50		1.50		1.50
B From plummet to POOL WALL AT SIDE	DESIGNATION	B-1		B-3		B-1p1		B-3p1		B-5		B-7.5	
	MINIMUM	2.50		3.50		2.30		2.90		4.25		4.50	
C From plummet to ADJACENT PLUMMET	DESIGNATION	C-1/1		C-3/3/1		C-1/1p1		C-3/1P1/3p1		C-5/3/1		C-7.5/5/3/1	
	MINIMUM	2.40		2.60		1.65		2.10		2.50		2.50	
D From plummet to POOL WALL AHEAD	DESIGNATION	D-1		D-3		D-1p1		D-3p1		D-5		D-7.5	
	MINIMUM	9.00		10.25		8.00		9.50		10.25		11.00	

	Dimensions	SPRINGBOARD				PLATFORM									
		1 Metre		3 Metres		1 Metres		3 Metres		5 Metres		7.5 Metres			
FINA	are in Metres														
E On plummet, from BOARD TO CEILING	DESIGNATION		E-1		E-3		E-1p1		E-3p1		E-5		E-7.5		E-10
	MINIMUM		5.00		5.00		3.50		3.50		3.50		3.50		5.00
F CLEAR OVERHEAD behind and each side of plummet	DESIGNATION	F-1	E-1	F-3	E-3	F-1p1	E-1p1	F-3p1	E-3p1	F-5	E-5	F-7.5	E-7.5	F-10	E-10
	MINIMUM	2.50	5.00	2.50	5.00	2.75	3.50	2.75	3.50	2.75	3.50	2.75	3.50	2.75	5.00
G CLEAR OVERHEAD ahead of plummet	DESIGNATION	C-1	E-1	C-3	E-3	G-1p1	E-1p1	G-3p1	E-3p1	G-5	E-5	G-7.5	E-7.5	G-10	E-10
	MINIMUM	5.00	5.00	5.00	5.00	5.00	3.50	5.00	3.50	5.00	3.50	5.00	3.50	6.00	5.00
H DEPTH OF WATER at plummet	DESIGNATION		H-1		H-3		H-1p1		H-3p1		H-5		H-7.5		H-10
	MINIMUM		3.50		3.80		3.30		3.60		3.80		4.50		5.00
J DISTANCE AND DEPTH	DESIGNATION	J-1	K-1	J-3	K-3	J-1p1	K-1p1	J-3p1	K-3p1	J-5	K-5	J-7.5	K-7.5	J-10	K-10
K ahead of plummet	MINIMUM	5.00	3.40	6.00	3.70	5.00	3.20	6.00	3.50	6.00	3.70	8.00	4.40	11.00	4.75
L DISTANCE AND DEPTH	DESIGNATION	L-1	M-1	L-3	M-3	L-1p1	M-1p1	L-3p1	M-3p1	L-5	M-5	L-7.5	M-7.5	L-10	M-10
M each side of plummet	MINIMUM	1.50	3.40	2.00	3.70	1.40	3.20	1.80	3.50	4.25	3.70	4.50	4.40	5.25	4.75
N MAXIMUM SLOPE TO REDUCE DIMENSIONS beyond full requirements	POOL DEPTH CEILING HT	30 degrees 30 degrees	NOTE	Dimensions C (plummet to adjacent plummet) apply for Platform with widths as detailed. For wider Platforms increase C by half the additional width(s)											

(d) Have adequate handholds around the perimeter in pools designed for extended swimming and bathing activity and excluding wave pools; and

(e) Stairs, ladders, or stepholes with:

(i) Stairs, when provided, meeting the following construction requirements:

(A) Treads of a nonslip finish;

(B) Stair tread edges colored to contrast with the color of the pool and clearly visible to the users;

(C) Recessed in pool areas used for lap swimming or provided with wave action; and

(D) Equipped with handrails extending over the edge of the deck.

(ii) Ladders or stepholes which:

(A) Furnish exit from pools greater than four feet in depth except in landing pools bringing the user toward a shallow area after entering the water;

(B) Are spaced a minimum of one for every fifty feet of pool perimeter greater than four feet deep;

(C) Are provided at both sides of the deep end in pools over thirty feet in width; and

(D) Are equipped with a handrail at the top of both sides extending over the coping or edge of the deck.

(iii) User access at the shallow end of pool.

(6) Owners shall ensure treatment turnover at rates no less than designated as follows:

(a) In receiving pools for water slides, water tubes, inner tube rides, speed slides or tubes, drop slides or tubes, and kidie flume slides, treatment turnover time can be based on any of the following:

(i) Total attraction volume in one-hour period;

(ii) Treatment turnover equals design peak usage (maximum users per hour) expressed in gpm;

(iii) A rate of one hour for 20,000 gallons per two or less attraction segments. Treatment turnover times may increase proportionately for larger pool volumes per two or less attraction segments;

(iv) Alternative methods where provisions to reduce contaminants are justified to the satisfaction of the department or local health officer; and

(v) Treatment turnover times not to exceed six hours.

(b) For wave pools, a minimum treatment turnover time of two hours; and

(c) For activity pools, a minimum treatment turnover time of four hours.

(7) Owners shall provide pool inlets which are:

(a) Submerged and located to produce uniform circulation of water and chemicals throughout the pool; and

(b) Located on the bottoms of pools greater than two thousand five hundred square feet, unless otherwise justified by the engineer to the satisfaction of the department or local health officer.

(8) Except as provided in (d) and (e) of this subsection owners shall provide pool outlets with:

(a) Overflow and main drain systems with each designed to carry one hundred percent of total recirculation filter flow;

(b) Overflow outlets that have:

(i) Design to maintain a minimum of sixty percent of filter recirculation flow at all times;

(ii) An overflow channel on the pool perimeter to promote uniform circulation and skimming action of the upper water layer for pools greater than twenty-five hundred square feet, with:

(A) Design preventing matter entering channel from returning to the pool;

(B) Dimensions minimizing the hazard for bathers, such as catching arms or feet in an overflow channel;

(C) 0.01 foot slope per foot or more;

(D) Drains sufficiently spaced and sized to collect and remove overflow water to return line to filter where applicable;

(E) Size sufficient to carry one hundred percent of the recirculation flow plus the surge flow equivalent to one-fifth of the balancing tank expressed in gallons per minute.

(iii) Skimmers, when used on pools up to twenty-five hundred square feet, if:

(A) Demonstrated to operate properly under design conditions;

(B) Turbulence is not expected to interfere with operation;

(C) Maximum flow rate through skimmers does not exceed four gpm per inch of weir;

(D) Devices are recessed in the wall of the pool so that no part protrudes beyond the plane of the wall into the pool;

(E) The skimmer is equipped with a device to prevent air lock in the recirculation suction line (i.e., an equalizer line). If equalizer lines are used they must be protected with suction outlets that conform to the ((ASME A112.19.8)) suction fitting standard; and

(F) The skimmer is equipped with a removable and cleanable screen designed to trap large solids.

(iv) Sidewall channels, when used on pools up to twenty-five hundred square feet, which accept the total recirculation volume of the pool through the upper side of the pool if:

(A) Overall flow through the channel exceeds four times the treatment recirculation rate;

(B) Design of channel prevents entrapment of the user;
(C) Openings of any screens have less than one-half inch slots;

(D) Channel openings do not allow access beyond the pool, except with the use of specific tools requiring their opening;

(E) Open area of screens prevent a suction or entrapment hazard which could be dangerous to the user; and

(F) The channel provides an action pulling water from the top of the pool to remove floatable debris and oils.

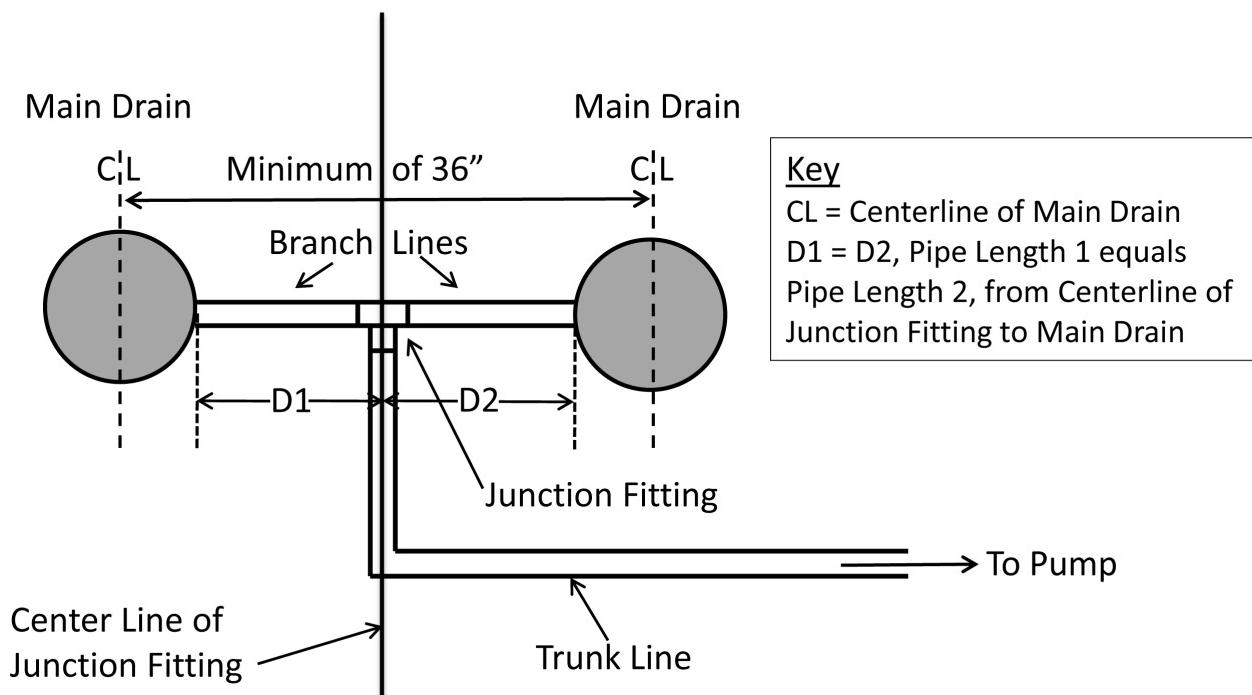
(c) Main drains in all pools must:

(i) Be located at the low points of the pool;

(ii) Have piping that is manifolded with junction fittings placed in the middle of branch line piping between main drains, so that the length of branch line piping is equal on each side of the junction fitting; see Figure 3

FIGURE 3:

Main Drain Branch Line Piping Detail.



(iii) Have a minimum of two main drains spaced at least three feet apart, measured between the centers of the drain covers;

(iv) Conform to the ((ASME A112.19.8)) suction fitting standard;

(v) Have covers with a maximum flow of 1.5 feet per second;

(vi) Be designed so that if one main drain becomes blocked, the remaining main drains are rated to at least one hundred percent of the maximum pump flow; see Table 5

(vii) Have means to control flow from recirculation pump or balancing tank.

TABLE 5
MAIN DRAIN FLOW RATING REQUIREMENTS

	Number of Main Drains Per Recirculation System			
	2	3	4	5
Main drain rated flow capacity must be at least equal to the percent of maximum pump flow indicated, depending on the number of main drains.	100%	50%	33.3%	25%

(d) Existing recreational water contact facilities may be modified to operate without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met;

(e) New recreational water contact facilities may be constructed without main drains, provided that water quality and water clarity standards established in WAC 246-262-050 are met.

(9) Owners shall maintain recirculation flow which:

(a) Does not exceed six feet per second in suction or valved discharge side of pump; and

(b) Does not exceed ten feet per second in open discharge pipes on the pressure side of the pump or filter discharge. This limit does not apply to the return inlet and the last two feet of pipe leading to the inlet.

(10) Owners shall provide a surge chamber or surge area in RWCFs with an entry pool to:

(a) Accommodate at least two minutes of the total turnover; and

(b) Maintain proper water levels for treatment and operation of the attraction.

(11) Owners having RWCFs with overflow channels requiring balancing tanks shall:

(a) Maintain volume equivalent to fifteen times maximum bathing load expressed in gallons; and

(b) Increase capacity as necessary to provide volume for make-up water and to prevent air lock in the pump suction line.

(12) Owners shall have and maintain recirculation pumps with adequate capacity to:

(a) Provide design flows and pressure for recirculation of the RWCF water over the entire operating pressure of the filter;

(b) Allow proper capacity for backwashing of filters when specified; and

(c) Have self-priming capability when installed above the pool water level.

(13) Where pumps precede the filter, owners shall install hair and lint strainers, which shall:

(a) Be located upstream of recirculation pumps;

(b) Be of corrosion-resistant material sufficiently strong to prevent collapse when clogged;

(c) Have an operable cover; and

(d) Provide valving to isolate the strainer when located below pool water level.

(14) Owners shall provide valves at appropriate locations to allow isolation and maintenance of equipment.

(15) Owners shall provide equipment rooms which:

(a) Enclose pumps, disinfection equipment, filters, and other electrical and mechanical equipment and associated chemicals;

(b) Provide adequate working space and access to perform routine operations;

(c) Provide lighting and ventilation of the equipment room; and

(d) Are not accessible to the public.

(16) Owners shall ensure the source of make-up water and associated piping in the RWCF:

(a) Provides sufficient quantity to replace daily losses from the pool;

(b) Comes from a supply conforming with chapter 246-290 WAC; and

(c) Prevents cross-connections using a minimum air gap of two pipe diameters or approved backflow prevention devices between the make-up water source and the RWCF attraction water or waste water.

(17) Owners shall equip RWCFs with filtration equipment which:

(a) Meets the applicable standards of NSF or equivalent;

(b) Uses acceptable types and filter rates described in Table 6 of this section:

TABLE 6
FILTER TYPES AND ACCEPTABLE RATES

Type of Filter	Range of Acceptable Filter Rate Expressed in gpm/sq. ft.	
	Minimum	Maximum*
Sand		
Rapid & pressure	—	3
Pressure high rate	10	18
Vacuum high rate	10	18
DE	Continuous feed	Manual feed
Vacuum	0.8	1.0
Pressure	1.0	1.35
Cartridge**		
Applied in temperature ranges:		
<95°F.	—	0.375
>95°F.	—	0.188

Note: * Filters sized at maximum application rate shall use flow control valves.

** Cartridge filters shall have a nominal micron rating of twenty microns or less.

(c) Has pressure or vacuum gauges for measuring loss of head (pressure) through the filter with minimum of one gauge preceding and one gauge following the filter;

(d) Has a flow indicator to measure treatment turnover; and

(e) Has means of discharging filter backwash to waste with:

(i) Discharge in a manner not creating a public nuisance;

(ii) Disposal in accordance with applicable local law or regulation;

(iii) Minimum air gap of two pipe diameters to prevent cross-connection from waste discharge and recirculation system piping;

(iv) Discharge receptor and piping of sufficient size to accept backwash water and prevent flooding; and

(v) Provisions to monitor filter effluent during backwash.

(18) Owners shall provide disinfection equipment which:

- (a) Provides a continuous and effective residual of disinfectant in the water;
- (b) Uses a disinfectant with a residual that is easily monitored;
- (c) Conforms with NSF standards when liquid or solid feed materials are used;
- (d) Has a design feed rate which will provide effective disinfection levels when RWCFs are in use;
- (e) Meets the following conditions if chlorine gas is used:
 - (i) Chlorine rooms shall:
 - (A) Be above ground level;
 - (B) Be constructed so all openings or partitions with adjoining rooms are sealed;
 - (C) Be located with consideration of prevailing winds to dissipate leaked chlorine away from the RWCF;
 - (D) Have door opening outward only and to the out-of-doors.
 - (ii) Mechanical exhaust ventilation of the chlorine room including:
 - (A) Air inlet located as far as possible from fan intake to promote good air circulation patterns;
 - (B) Minimum of one air change per minute in the chlorine room when fan is operating;
 - (C) A remote switch outside the room or a door-activated switch to turn on fan prior to entering;
 - (D) Suction for fan near the floor; and
 - (E) Exhaust for fan and chlorinator vent located to prevent contaminating air intakes or prevent undue hazard for the users of the RWCF.
 - (iii) Gas chlorine systems which:
 - (A) Are vacuum injection type, with vacuum actuated cylinder regulators; and
 - (B) Provide adequate-sized backflow and anti-siphon protection at the ejector.
 - (iv) Breathing protection available in an accessible area for the operator outside of the chlorine room including:
 - (A) Instructions about limitations with chlorine concentrations and concentrations of oxygen if chlorine-type canister masks are used; and
 - (B) Self-contained breathing apparatus designed for use in a chlorine atmosphere as preferred equipment for working with chlorine leaks.
 - (v) Means for automatic shutoff when the recirculation filter pump is off or flow to the pool is interrupted;
 - (vi) Chlorine gas cylinders shall:
 - (A) Be stored only in chlorine rooms; and
 - (B) Not exceed one hundred fifty pounds tare weight per cylinder; except, wave pools, where one-ton cylinders may be used. Only a single, one-ton cylinder shall be stored on the premise at any time.
- (19) Owners applying chemicals other than disinfectant shall provide chemical feed equipment with:
 - (a) Adequate size and design to allow routine cleaning and maintenance;
 - (b) Materials resistant to action of the chemicals to be used; and
 - (c) Means for automatic shut off when the recirculation filter pump is off or flow to the pool is interrupted.

(20) Owners shall have testing equipment to provide means for measuring disinfectant residuals, pH, alkalinity, and any other chemicals used routinely in the RWCF water. In pools where compressed chlorine gas is used, means to detect leaks shall be provided, i.e., use of proper strength ammonia vapor.

(21) Owners shall provide easily accessible change room facilities at all RWCFs with:

- (a) Dressing rooms, showers, toilets, urinals, and sinks;
- (b) Change room design including:
 - (i) Separate facilities for both sexes;
 - (ii) Floors of a nonslip finish with suitable drains;
 - (iii) Junctions between walls and floors coved for ease of cleaning;
 - (iv) Adequate ventilation to prevent build-up of moisture in the facility; and
 - (v) Provisions to minimize cross traffic with nonusers.
- (c) Plumbing fixtures as described in Table 7 of this section.

TABLE 7
MINIMUM PLUMBING FIXTURE REQUIREMENTS
BASED ON MAXIMUM PEAK PERIOD OCCUPANCY

	Type of Fixture	Occupancy/Sex	Male	Female
1.	Toilets	First 600	1/200	1/100
		Portion exceeding 600	1/450	1/300
2.	Urinals	First 600	1/200	-
		Portion exceeding 600	1/450	-
3.	Showers	First 300	1/100	1/100
		Portion exceeding 300	1/200	1/200
4.	Sinks	First 400	1/200	1/200
		Next 350	1/350	1/350
5.	Hose bibs	Portion exceeding 750	1/500	1/500
			1 accessible to change rooms	
6.	Janitor sink			1 within the RWCF

(d) Showers:

- (i) Delivering water at a temperature range between ninety and one hundred ten degrees Fahrenheit; and
- (ii) Providing liquid or powdered soap in nonglass dispensers.

(e) Flush toilets and toilet tissue in dispensers;

(f) Sinks providing:

- (i) Tempered or hot and cold running water,
- (ii) Liquid or powdered soap in nonglass dispensers, and
- (iii) Disposable towels or electric hand dryers.

(g) Sewage disposed of in a manner approved by the department or local health officer; and

(h) Hose bibs with vacuum breakers provided at convenient locations.

(22) Owners shall design and maintain lighting at RWCF attractions or change rooms to:

(a) Illuminate indoor attractions, outdoor attractions used after dusk, or change rooms with a minimum lighting intensity maintained thirty inches above any walking surface, pool deck, or pool area of:

- (i) Thirty foot-candles at indoor facilities;
- (ii) Fifteen foot-candles at outdoor facilities; or
- (iii) Twenty foot-candles in change rooms.

(b) Allow lifeguards or attendants to clearly see every part of pool waters and walking surfaces; and

(c) Meet any additional lighting requirements deemed necessary by the department or local health officer.

(23) Owners shall provide first-aid facilities in every RWCF including:

- (a) A twenty-four package first-aid kit per WAC 296-24-065;
- (b) Two or more blankets reserved for emergency use;
- (c) A telephone with a prominently displayed list of emergency medical service response numbers;
- (d) A backboard meeting the specifications of the ARC; and
- (e) Sufficient and suitable area to accommodate persons requiring treatment and necessary first-aid equipment.

(24) Owners shall provide signs at RWCF entrances and change rooms. Any combination of words, pictures, or symbols may be used to convey the following conditions:

- (a) Prohibition of use by persons with communicable diseases;
- (b) Prohibition of use by persons under the influence of alcohol or drugs;
- (c) Requirement for a cleansing shower before entering the attractions;
- (d) Warning that persons refusing to obey the attendants are subject to removal from the premises; and
- (e) Prohibition of food and drink in pool, change room, or on walking surfaces.

(25) If owners allow or make provision for food service:

(a) Food and beverage sale and consumption areas shall be separate from pool, change room, and walking surfaces;

- (b) Trash containers shall be provided; and
- (c) No glass containers shall be allowed in the RWCF.

(26) Owners shall prevent users or spectators access to mechanical, electrical, or chemical equipment facilities.

(27) Owners shall provide an operable drinking fountain of the angle jet type design meeting the requirements of the American Standards Association.

AMENDATORY SECTION (Amending Order 226B, filed 12/23/91, effective 1/23/92)

WAC 246-262-130 Notice of decision—Adjudicative proceeding. ((1)) A hearing requested to contest a local health officer's action shall be governed by the local health jurisdiction's rules for hearings.

((2)(a) The department's notice of a denial, suspension, modification, or revocation of a license shall be consistent with section 377, chapter 3, Laws of 1991. An applicant or licensee holder has the right to an adjudicative proceeding to contest the decision.

((b) A department notice of imposition of a civil fine shall be consistent with section 378, chapter 3, Laws of 1991. A person the department imposes a civil fine on has the right to an adjudicative proceeding to contest the decision.

((c) A license applicant or holder or a person the department imposes a fine on contesting a department decision shall within twenty-eight days of receipt of the decision:

((i) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Administrative Hearings Unit, Department of Health, 1300 Quincy Street, S.E., Mailstop: EY-17, Olympia, WA 98504; and

- ((ii) Include in or with the application:

((A) A specific statement of the issue or issues and law involved;

((B) The grounds for contesting the department decision; and

- ((C) A copy of the contested department decision.

((d) The proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and chapter 246-08 WAC. If a provision in this chapter conflicts with chapter 246-08 WAC, the provision in this chapter governs.) A person aggrieved by the department's or local health officer's denial, suspension, modification, or revocation of a license, issuance of an order, or levy of a civil penalty may request an administrative hearing.

((1) A hearing requested to contest a local health officer's action is governed by the local health jurisdiction's rules for hearings.

((2) A hearing requested to contest a department action is governed by chapters 246-10 WAC and 34.05 RCW.

WSR 12-11-114 PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Aging and Disability Services Administration)

[Filed May 22, 2012, 11:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-02-082.

Title of Rule and Other Identifying Information: WAC 388-106-0015, 388-106-0020, 388-106-0070, 388-106-0310, 388-106-0400, 388-106-0410, 388-106-0415, 388-106-0420, 388-106-0425, 388-106-0430, 388-106-0435, 388-106-0500, 388-106-0510, 388-106-0515, 388-106-0520, 388-106-0525, 388-106-0530 and 388-106-0535, to consolidate the medically needy in-home (MNI) and medically needy residential (MNR) waivers into the COPES waiver.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on June 26, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 27, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on June 26, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by June 6, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is consolidating three waivers into one to improve efficiency. This rule amendment is necessary to manage budget shortfalls and maintain fund solvency. The Centers for Medicare and Medicaid Services (CMS) gave the department approval effective April 1, 2012.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.-520.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2531.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.053.328 [34.05.-328] (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

May 18, 2012
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPES)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may

receive personal care in their own home or in a residential facility.

(3) **(Medically needy residential waiver (MNRW))** is a medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **(Medically needy in-home waiver (MNIW))** is a medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

((5))) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

((6))) **(4) Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

((7))) **(5) Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

((8))) **(6) Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

((9))) **(7) Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

((10))) **(8) GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

((11))) **(9) Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

((12))) **(10) Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

((13))) **(11) Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

((14))) **(12) Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

((15))) **(13) Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-853 WAC.

((16))) **(14) Nursing facility.**

((17))) **(15) New Freedom consumer directed services (NFCDS)** is a medicaid waiver program authorized under RCW 74.39A.030.

AMENDATORY SECTION (Amending WSR 08-05-026, filed 2/12/08, effective 3/14/08)

WAC 388-106-0020 Under the MPC, COPES, ((MNRW, MNIW,)) and chore programs, what services are not covered? The following types of services are not covered under MPC, COPES, ((MNRW, MNIW,)) and chore:

- (1) Child care.
- (2) Individual providers must not provide:
 - (a) Sterile procedures unless the provider is a family member or the client self directs the procedure;
 - (b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.
 - (3) Agency providers((,including family members who provide care while working as an agency provider,)) must not provide:
 - (a) Sterile procedures;
 - (b) Self-directed care;
 - (c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.
 - (4) Services provided over the telephone.
 - (5) Services to assist other household members not eligible for services.
 - (6) Development of social, behavioral, recreational, communication, or other types of community living skills.
 - (7) Nursing care.
 - (8) Pet care.
 - (9) Assistance with managing finances.
 - (10) Respite.
 - (11) Yard care.

AMENDATORY SECTION (Amending WSR 08-12-023, filed 5/29/08, effective 7/1/08)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDD services, COPES, ((MNIW, MNRW,)) MPC, chore, respite, adult day health, GAU-funded residential care, PACE, private duty nursing, New Freedom or long-term care services within the WMIP program.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

WAC 388-106-0310 Am I eligible for COPES-funded services? You are eligible for COPES-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

- (1) You are age:
 - (a) Eighteen or older and blind or have a disability, as defined in WAC ((388-475-0050)) 182-512-0050; or
 - (b) Sixty-five or older.
 - (2) You meet financial eligibility requirements. This means the department will assess your finances and deter-

mine if your income and resources fall within the limits set in WAC 388-515-1505, community options program entry system (COPES).

(3) You:

(a) Are not eligible for medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which is defined in WAC 388-106-0355(1).

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-106-0400	What services may I receive under medically needy residential waiver (MNRW)?
WAC 388-106-0410	Am I eligible for MNRW-funded services?
WAC 388-106-0415	When do MNRW services start?
WAC 388-106-0420	How do I remain eligible for MNRW?
WAC 388-106-0425	How do I pay for MNRW services?
WAC 388-106-0430	Can I be employed and receive MNRW?
WAC 388-106-0435	Are there waiting lists for MNRW?
WAC 388-106-0500	What services may I receive under medically needy in-home waiver (MNIW)?
WAC 388-106-0510	Am I eligible for MNIW-funded services?
WAC 388-106-0515	When do MNIW services start?
WAC 388-106-0520	How do I remain eligible for MNIW?
WAC 388-106-0525	How do I pay for MNIW?
WAC 388-106-0530	Can I be employed and receive MNIW?
WAC 388-106-0535	Are there waiting lists for MNIW?

WSR 12-11-115
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 11-10—Filed May 22, 2012, 1:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-03-055.

Title of Rule and Other Identifying Information: Chapter 173-400 WAC, General regulations for air pollution sources, ecology is also proposing a revision to the state implementation plan (SIP) for meeting the requirements of Section 110, Parts C and D of the Federal Clean Air Act.

Hearing Location(s): Department of Ecology, Auditorium, ROA-32, 300 Desmond Drive N.E., Lacey, WA 98503, on June 27, 2012, at 6:30 p.m. Immediately following the hearing on the proposed rule amendments to chapter 173-400 WAC, ecology will hold a hearing on the submittal of WAC 173-400-020 and 173-400-030(3) to SIP.

Date of Intended Adoption: July 13, 2012.

Submit Written Comments to: Linda Whitcher, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail Linda.Whitcher@ecy.wa.gov, fax (360) 407-7534, by July 6, 2012.

Assistance for Persons with Disabilities: Contact air quality program at (360) 407-6800, by June 13, 2012, TTY (711) Washington relay service or (877) 833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to:

- Make the rule consistent with requirements in the Federal Clean Air Act.
- Support ecology's request for EPA approval of SIP revisions.
- Clarify that the SIP applies to the six air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS), their precursors, and those air contaminants regulated under Part C Title I of the Federal Clean Air Act.
- Amend the rule sections related to permits for industrial and commercial sources of air pollution including minor new source review and major new source review (prevention of significant deterioration).
- Help emitters comply with the rule through better access to references, improved readability, and better understanding of regulations and permitting requirements.

Ecology is proposing the rule amendments to assure that it is consistent with federal requirements. These rules would then be adopted into the SIP so that Washington can gain SIP approval for its new source review and prevention of significant deterioration permitting programs. Gaining SIP approval of these programs helps ensure the state is aligned and consistent with federal law while attaining and maintaining good air quality and protecting citizen's health.

Reasons Supporting Proposal: The Federal Clean Air Act requires that Washington state develop a plan to attain and maintain the NAAQS in all areas of the state and a specific plan to attain the standards for each area designated non-attainment for a specific standard. SIPs are developed by

state and local air quality management agencies to meet these requirements.

Statutory Authority for Adoption: Chapter 70.94 RCW, Washington Clean Air Act.

Statute Being Implemented: Chapter 70.94 RCW, Washington Clean Air Act.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Two consecutive public hearings will be held on June 27, 2012; one on the rule proposal and one on the SIP. During the first hearing ecology will receive comments on the proposed rule amendments to chapter 173-400 WAC.

Immediately after the close of the rule proposal hearing the second hearing will be opened to take comments on the proposal to submit portions of the rule proposal, (WAC 173-400-020 and 173-400-030(3)) to United States Environmental Protection Agency, EPA, for inclusion in the SIP in compliance with the Federal Clean Air Act. The rule revisions are intended to meet the requirements of Section 110, Part C and Part D, of the Federal Clean Air Act.

EPA is engaged in the process of amending National Emission Standards for Hazardous Air Pollutants for Source Categories for 40 C.F.R. Part 63 Subpart HH, HHH, DDDDD, and JJJJJ, which are included in ecology's rule proposal. Should EPA finalize these rules before ecology finalizes this rule revision, we intend to adopt the final rules. If EPA does not finalize the federal revisions before ecology finalizes this rule revision, ecology will not adopt the draft federal rules into the state rule.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Linda Whitcher, Department of Ecology, Lacey, Washington, (360) 407-6875; Implementation and Enforcement: Al Newman, Department of Ecology, Lacey, Washington, (360) 407-6810.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the proposed rule does not impose additional costs on businesses. Therefore, costs were determined to be below the minor cost threshold definition in RCW 198.85.020(2) [19.85.020(2)].

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Linda Whitcher, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6875, fax (360) 407-7534, e-mail Linda.Whitcher@ecy.wa.gov.

May 22, 2012

Polly Zehm
Deputy Director

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

WAC 173-400-020 Applicability. (1) The provisions of this chapter shall apply statewide, except as provided in WAC 173-400-030, 173-400-036, 173-400-075, 173-400-

100, 173-400-102, 173-400-103, 173-400-104, 173-400-110, 173-400-111, 173-400-112, 173-400-113, 173-400-115, 173-400-171, 173-400-800 through 173-400-860, and 173-400-930.

(2) Ecology regulations that have been or will be approved by the United States Environmental Protection Agency (EPA) for inclusion in the Washington state implementation plan apply for purposes of Washington's state implementation plan, only to the following:

(a) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(b) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act (relating to prevention of significant deterioration and visibility), but only for the purpose of meeting the requirements of Part C of Title I of the Federal Clean Air Act or to the extent those additional air contaminants are regulated in order to avoid such requirements.

(3) An authority may enforce this chapter and may also adopt standards or requirements. These standards or requirements may not be less stringent than the current state air quality rules and may be more stringent than the current regulations. Unless properly delegated by ecology, authorities do not have jurisdiction over the following sources:

(a) Specific source categories over which the state, by separate regulation, has assumed or hereafter does assume jurisdiction.

(b) Automobiles, trucks, aircraft.

(c) Those sources under the jurisdiction of the energy facility site evaluation council.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-030 Definitions. The definitions in this section apply statewide except where a permitting authority has redefined a specific term. Except as provided elsewhere in this chapter, the ((following)) definitions in this section apply throughout the chapter:

(1) **"Actual emissions"** means the actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (a) through (c) of this subsection.

(a) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. Ecology or an authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(b) Ecology or an authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

(2) **"Adverse impact on visibility"** is defined in WAC 173-400-117.

(3) **"Air contaminant"** means:

(a) Dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

(b) For the purposes of regulation under Washington's state implementation plan, "air contaminant" means only:

(i) Those air contaminants for which EPA has established National Ambient Air Quality Standards (NAAQS) and precursors to such NAAQS pollutants as determined by EPA for the applicable geographic area; and

(ii) Any additional air contaminants that are required to be regulated under Part C of Title I of the Federal Clean Air Act (relating to prevention of significant deterioration and visibility), but only for the purpose of meeting the requirements of Part C of Title I of the Federal Clean Air Act or to the extent those additional air contaminants are regulated in order to avoid such requirements.

(4) **"Air pollution"** means the presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities, and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property. For the purposes of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

(5) **"Allowable emissions"** means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(a) The applicable standards as in 40 CFR Part 60, 61, 62, or 63;

(b) Any applicable SIP emissions limitation including those with a future compliance date; or

(c) The emissions rate specified as ((an)) a federally enforceable approval condition, including those with a future compliance date.

(6) **"Ambient air"** means the surrounding outside air.

(7) **"Ambient air quality standard"** means an established concentration, exposure time, and frequency of occurrence of air contaminant(s) in the ambient air which shall not be exceeded.

(8) **"Approval order"** is defined in **"order of approval."**

(9) **"Attainment area"** means a geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard for a given criteria pollutant.

(10) **"Authority"** means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(11) **"Begin actual construction"** means, in general, initiation of physical on-site construction activities on an

emission unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

(12) "**Best available control technology (BACT)**" means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Part 60 and Part 61. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

(13) "**Best available retrofit technology (BART)**" means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

(14) "**Brake horsepower (BHP)**" means the measure of an engine's horsepower without the loss in power caused by the gearbox, alternator, differential, water pump, and other auxiliary components.

(15) "**Bubble**" means a set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

(16) "**Capacity factor**" means the ratio of the average load on equipment or a machine for the period of time considered, to the manufacturer's capacity rating of the machine or equipment.

(17) "**Class I area**" means any area designated under section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;

- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park;
- (h) Pasayten Wilderness; and
- (i) Spokane Indian Reservation.

(18) "**Combustion and incineration units**" means units using combustion for waste disposal, steam production, chemical recovery or other process requirements; but excludes outdoor burning.

(19)(a) "**Commence**" as applied to construction, means that the owner or operator has all the necessary preconstruction approvals or permits and either has:

(i) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(ii) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

(b) For the purposes of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

(20) "**Concealment**" means any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

(21) "**Criteria pollutant**" means a pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

(22) "**Director**" means director of the Washington state department of ecology or duly authorized representative.

(23) "**Dispersion technique**" means a method that attempts to affect the concentration of a pollutant in the ambient air other than by the use of pollution abatement equipment or integral process pollution controls.

(24) "**Ecology**" means the Washington state department of ecology.

(25) "**Emission**" means a release of air contaminants into the ambient air.

(26) "**Emission reduction credit (ERC)**" means a credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

(27) "**Emission standard**" and "**emission limitation**" means a requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

(28) "**Emission threshold**" means an emission of a listed air contaminant at or above the following rates:

Air Contaminant	Annual Emission Rate
Carbon monoxide:	100 tons per year
Nitrogen oxides:	40 tons per year
Sulfur dioxide:	40 tons per year
Particulate matter (PM):	25 tons per year of PM emissions
	15 tons per year of PM-10 emissions 10 tons per year of PM-2.5
Volatile organic compounds:	40 tons per year
Fluorides:	3 tons per year
Lead:	0.6 tons per year
Sulfuric acid mist:	7 tons per year
Hydrogen sulfide (H ₂ S):	10 tons per year
Total reduced sulfur (including H ₂ S):	10 tons per year
Reduced sulfur compounds (including H ₂ S):	10 tons per year

(29) "**Emissions unit**" or "**emission unit**" means any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 or 70.98 RCW.

(30) "**Excess emissions**" means emissions of an air pollutant in excess of any applicable emission standard.

(31) "**Excess stack height**" means that portion of a stack which exceeds the greater of sixty-five meters or the calculated stack height described in WAC 173-400-200(2).

(32) "**Existing stationary facility (facility)**" is defined in WAC 173-400-151.

(33) "**Federal Clean Air Act (FCAA)**" means the Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

(34) "**Federal Class I area**" means any federal land that is classified or reclassified Class I. The following areas are federal Class I areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness.

(35) "**Federal land manager**" means the secretary of the department with authority over federal lands in the United States.

(36) "**Federally enforceable**" means all limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62 and 63, requirements established within the Washington SIP, requirements within any approval or order established under 40 CFR 52.21 or under a SIP approved new source review

regulation, and emissions limitation orders issued under WAC 173-400-091.

(37) "**Fossil fuel-fired steam generator**" means a device, furnace, or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.

(38) "**Fugitive dust**" means a particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

(39) "**Fugitive emissions**" means emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(40) "**General process unit**" means an emissions unit using a procedure or a combination of procedures for the purpose of causing a change in material by either chemical or physical means, excluding combustion.

(41) "**Good engineering practice (GEP)**" refers to a calculated stack height based on the equation specified in WAC 173-400-200 (2)(a)(ii).

(42) "**Greenhouse gases (GHGs)**" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(43) "**Incinerator**" means a furnace used primarily for the thermal destruction of waste.

(44) "**In operation**" means engaged in activity related to the primary design function of the source.

(45) "**Mandatory Class I federal area**" means any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

- (a) Alpine Lakes Wilderness;
- (b) Glacier Peak Wilderness;
- (c) Goat Rocks Wilderness;
- (d) Mount Adams Wilderness;
- (e) Mount Rainier National Park;
- (f) North Cascades National Park;
- (g) Olympic National Park; and
- (h) Pasayten Wilderness;

(46) "**Masking**" means the mixing of a chemically non-reactive control agent with a malodorous gaseous effluent to change the perceived odor.

(47) "**Materials handling**" means the handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

(48) "**Modification**" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(49) "**National Ambient Air Quality Standard (NAAQS)**" means an ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O₃), sulfur dioxide (SO₂), lead (Pb), and nitrogen dioxide (NO₂).

(50) "**National Emission Standards for Hazardous Air Pollutants (NESHAPS)**" means the federal rules in 40 CFR Part 61.

(51) "**National Emission Standards for Hazardous Air Pollutants for Source Categories**" means the federal rules in 40 CFR Part 63.

(52) "**Natural conditions**" means naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

(53) "**New source**" means:

(a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted; and

(b) Any other project that constitutes a new source under the Federal Clean Air Act.

(54) "**New Source Performance Standards (NSPS)**" means the federal rules in 40 CFR Part 60.

(55) "**Nonattainment area**" means a geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

(56) "**Nonroad engine**" means:

(a) Except as discussed in (b) of this subsection, a nonroad engine is any internal combustion engine:

(i) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(ii) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(iii) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(b) An internal combustion engine is not a nonroad engine if:

(i) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(ii) The engine is regulated by a New Source Performance Standard promulgated under section 111 of the Federal Clean Air Act; or

(iii) The engine otherwise included in (a)(iii) of this subsection remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that oper-

ates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

(57) "**Notice of construction application**" means a written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

(58) "**Opacity**" means the degree to which an object seen through a plume is obscured, stated as a percentage.

(59) "**Outdoor burning**" means the combustion of material in an open fire or in an outdoor container, without providing for the control of combustion or the control of the emissions from the combustion. Wood waste disposal in wigwam burners or silo burners is not considered outdoor burning.

(60) "**Order**" means any order issued by ecology or a local air authority pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

(61) "**Order of approval**" or "**approval order**" means a regulatory order issued by a permitting authority to approve the notice of construction application for a proposed new source or modification, or the replacement or substantial alteration of control technology at an existing stationary source.

(62) "**Ozone depleting substance**" means any substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

(63) "**Particulate matter**" or "**particulates**" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(64) "**Particulate matter emissions**" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method specified in Title 40, chapter I of the Code of Federal Regulations or by a test method specified in the SIP.

(65) "**Parts per million (ppm)**" means parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

(66) "**Permitting authority**" means ecology or the local air pollution control authority with jurisdiction over the source.

(67) "**Person**" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

(68) "**PM-10**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(69) "**PM-10 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate

method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

(70) "**PM-2.5**" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

(71) "**PM-2.5 emissions**" means finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51 or by a test method specified in the SIP.

(72) "**Portable source**" means a type of stationary source which emits air contaminants only while at a fixed location but which is capable of being transported to various locations. Examples include a portable asphalt plant or a portable package boiler.

(73) "**Potential to emit**" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a source.

(74) "**Prevention of significant deterioration (PSD)**" means the program in WAC 173-400-700 to 173-400-750.

(75) "**Projected width**" means that dimension of a structure determined from the frontal area of the structure, projected onto a plane perpendicular to a line between the center of the stack and the center of the building.

(76) "**Reasonably attributable**" means attributable by visual observation or any other technique the state deems appropriate.

(77) "**Reasonably available control technology (RACT)**" means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any source or source category shall be adopted only after notice and opportunity for comment are afforded.

(78) "**Regulatory order**" means an order issued by a permitting authority that requires compliance with:

(a) Any applicable provision of chapter 70.94 RCW or rules adopted there under; or

(b) Local air authority regulations adopted by the local air authority with jurisdiction over the sources to whom the order is issued.

(79) "**Secondary emissions**" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major stationary source or major modification which causes the secondary emissions. Secondary emissions ((~~may~~) include((~~;~~
but are not limited to:

(a) Emissions from ships or trains located at the new or modified major stationary source; and

(b)) emissions from any offsite support facility which would not ((otherwise)) be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

(80) "**Source**" means all of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

(81) "**Source category**" means all sources of the same type or classification.

(82) "**Stack**" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

(83) "**Stack height**" means the height of an emission point measured from the ground-level elevation at the base of the stack.

(84) "**Standard conditions**" means a temperature of 20°C (68°F) and a pressure of 760 mm (29.92 inches) of mercury.

(85) "**State implementation plan (SIP)**" or "**Washington SIP**" means the Washington SIP in 40 CFR Part 52, sub-part WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing the National Ambient Air Quality Standards.

(86) "**Stationary source**" means any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

(87) "**Sulfuric acid plant**" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

(88) "**Synthetic minor**" means any source whose potential to emit has been limited below applicable thresholds by means of an enforceable order, rule, or approval condition.

(89) "**Total reduced sulfur (TRS)**" means the sum of the sulfur compounds hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides emitted and measured by EPA method 16 in Appendix A to 40 CFR Part 60 or an EPA approved equivalent method and expressed as hydrogen sulfide.

(90) "**Total suspended particulate**" means particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

(91) "**Toxic air pollutant (TAP)**" or "**toxic air contaminant**" means any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

(92) "**Unclassifiable area**" means an area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

(93) "**United States Environmental Protection Agency (USEPA)**" shall be referred to as EPA.

(94) "**Visibility impairment**" means any humanly perceptible change in visibility (light extinction, visual range, contrast, or coloration) from that which would have existed under natural conditions.

(95) "**Volatile organic compound (VOC)**" means any carbon compound that participates in atmospheric photochemical reactions.

(a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC-43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$); 2-(difluoromethoxymethyl)-1,1,1,2,3,3-heptafluoropropane ((CF_3)₂CFCF₂OCH₃); 1-ethoxy-1,1,2,2,3,3,4,4-nonafluorobutane ($C_4F_9OC_2H_5$); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF_3)₂CFCF₂OC₂H₅); methyl acetate, 1,1,1,2,2,3,3-heptaflu-

oro-3-methoxy-propane (n-C₃F₇OCH₃ or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea); methyl formate (HCOOCH₃); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; and perfluorocarbon compounds that fall into these classes:

- (i) Cyclic, branched, or linear completely fluorinated alkanes;
- (ii) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;
- (iii) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and
- (iv) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by ecology, the authority, or EPA.

(c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, ecology or the authority may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of ecology ((or)), the authority, or EPA the amount of negligibly-reactive compounds in the source's emissions.

(d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-036 Relocation of portable sources.

(1) Applicability.

(a) Portable sources that meet the requirements of this section may without obtaining a site-specific or permitting authority-specific order of approval relocate and operate in any jurisdiction in which the permitting authority has adopted ((these rules)) this section by reference. The owner or operator of a portable source may file a new notice of construction application in compliance with WAC 173-400-110 each time the portable source relocates in lieu of participating in the inter-jurisdictional provisions in this section.

(b) Permitting authority participation in the inter-jurisdictional provisions of this section is optional. This section applies only in those jurisdictions where the permitting authority has adopted it. Nothing in this section affects a permitting authority's ability to enter into an agreement with another permitting authority to allow inter-jurisdictional relocation of a portable source under conditions other than those listed here except that subsection (2) of this section applies statewide.

(c) This section applies to sources that move from the jurisdiction of one permitting authority to the jurisdiction of another permitting authority, inter-jurisdictional relocation. This section does not apply to intra-jurisdictional relocation.

(d) Engines subject to WAC 173-400-035 Nonroad engines are not portable sources subject to this section.

(2) **Portable sources in nonattainment areas.** If a portable source is located in a nonattainment area and if the source emits the pollutants or pollutant precursors for which the area is classified as nonattainment, then the source must acquire a site-specific order of approval.

(3) **Major stationary sources.** If a portable source is a major stationary source then it must also comply with WAC 173-400-700 through 173-400-750 as applicable.

(4) **Relocation requirements.** Portable sources are allowed to operate at a new location without obtaining an order of approval from the permitting authority with jurisdiction over the new location provided that:

(a) A permitting authority in Washington state issued a notice of construction order of approval for the portable source after July 1, 2010, identifying the emission units as a "portable source";

(b) The owner/operator of the portable source submits a relocation notice on a form provided by the permitting authority and a copy of the applicable portable source order of approval to the permitting authority with jurisdiction over the intended operation location a minimum of fifteen calendar days before the portable source begins operation at the new location;

(c) The owner/operator submits the emission inventory required under WAC 173-400-105 to each permitting authority in whose jurisdiction the portable source operated during the preceding year. The data must be sufficient in detail to enable each permitting authority to calculate the emissions within its jurisdiction and the yearly aggregate.

(d) Operation at any location under this provision is limited to one year or less. Operations lasting more than one year must obtain a site specific order of approval.

((4)) (5) **Enforcement of the order of approval.** The permitting authority with jurisdiction over the location where a portable source is operating has authority to enforce the conditions of the order of approval that authorizes the portable source operation, regardless of which permitting authority issued the order of approval. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

((5)) (6) **Change of conditions to orders of approval.** To change the conditions in an order of approval, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

((6)) (7) **Portable source modification.** Prior to beginning actual construction or installation of a modification of a portable source, the owner/operator must obtain a new order of approval from the permitting authority with jurisdiction over the portable source.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-050 Emission standards for combustion and incineration units. (1) Combustion and incineration emissions units must meet all requirements of WAC 173-400-040 and, in addition, no person shall cause or allow emissions of particulate matter in excess of 0.23 gram per dry cubic meter at standard conditions (0.1 grain/dscf), except, for an emissions unit combusting wood derived fuels for the production of steam. No person shall allow the emission of particulate matter in excess of 0.46 gram per dry cubic meter at standard conditions (0.2 grain/dscf), as measured by EPA method 5 in Appendix A to 40 CFR Part 60, (in effect on (July 1, 2010) May 1, 2012) or approved procedures contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(2) For any incinerator, no person shall cause or allow emissions in excess of one hundred ppm of total carbonyls as measured by Source Test Method 14 procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. An applicable EPA reference method or other procedures to collect and analyze for the same compounds collected in the ecology method may be used if approved by the permitting authority prior to its use.

(a) **Incinerators** not subject to the requirements of chapter 173-434 WAC or WAC 173-400-050 (4) or (5), or requirements adopted by reference in WAC 173-400-075 (40 CFR 63 subpart EEE) and WAC 173-400-115 (40 CFR 60 subparts E, Ea, Eb, Ec, AAAA, and CCCC) shall be operated only during daylight hours unless written permission to operate at other times is received from the permitting authority.

(b) Total carbonyls means the concentration of organic compounds containing the =C=O radical as collected by the Ecology Source Test Method 14 contained in "Source Test Manual - Procedures For Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology.

(3) Measured concentrations for combustion and incineration units shall be adjusted for volumes corrected to seven percent oxygen, except when the permitting authority determines that an alternate oxygen correction factor is more representative of normal operations such as the correction factor included in an applicable NSPS or NESHAP, actual operating characteristics, or the manufacturer's specifications for the emission unit.

(4) **Commercial and industrial solid waste incineration units** constructed on or before November 30, 1999.

(a) Definitions.

(i) "**Commercial and industrial solid waste incineration (CISWI) unit**" means any combustion device that combusts commercial and industrial waste, as defined in this subsection. The boundaries of a CISWI unit are defined as, but not limited to, the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(A) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(ii) "**Commercial and industrial solid waste**" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(b) Applicability. This section applies to incineration units that meet all three criteria:

(i) The incineration unit meets the definition of CISWI unit in this subsection.

(ii) The incineration unit commenced construction on or before November 30, 1999.

(iii) The incineration unit is not exempt under (c) of this subsection.

(c) The following types of incineration units are exempt from this subsection:

(i) *Pathological waste incineration units*. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in 40 CFR 60.2265 (in effect on July 1, 2010) are not subject to this section if you meet the two requirements specified in (c)(i)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste burned, and the weight of all other fuels and wastes burned in the unit.

(ii) *Agricultural waste incineration units*. Incineration units burning 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of agricultural wastes as defined in 40 CFR 60.2265 (in effect on January 30, 2001) are not subject to this subpart if you meet the two requirements specified in (c)(ii)(A) and (B) of this subsection.

(A) Notify the permitting authority that the unit meets these criteria.

(B) Keep records on a calendar quarter basis of the weight of agricultural waste burned, and the weight of all other fuels and wastes burned in the unit.

(iii) *Municipal waste combustion units*. Incineration units that meet either of the two criteria specified in (c)(iii)(A) and (B) of this subsection.

(A) Units are regulated under 40 CFR Part 60, subpart Ea or subpart Eb (in effect on July 1, 2010); Spokane County Air Pollution Control Authority Regulation 1, Section 6.17 (in effect on February 13, 1999); 40 CFR Part 60, subpart AAAA (in effect on July 1, 2010); or WAC 173-400-050(5).

(B) Units burn greater than 30 percent municipal solid waste or refuse-derived fuel, as defined in 40 CFR Part 60, subparts Ea (in effect on July 1, 2010), Eb (in effect on July 1, 2010), and AAAA (in effect on July 1, 2010), and WAC 173-400-050(5), and that have the capacity to burn less than 35 tons (32 megagrams) per day of municipal solid waste or refuse-derived fuel, if you meet the two requirements in (c)(iii)(B)(I) and (II) of this subsection.

(I) Notify the permitting authority that the unit meets these criteria.

(II) Keep records on a calendar quarter basis of the weight of municipal solid waste burned, and the weight of all other fuels and wastes burned in the unit.

(iv) *Medical waste incineration units*. Incineration units regulated under 40 CFR Part 60, subpart Ec (Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996) (in effect on July 1, 2010);

(v) *Small power production facilities*. Units that meet the three requirements specified in (c)(v)(A) through (C) of this subsection.

(A) The unit qualifies as a small power-production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vi) *Cogeneration facilities*. Units that meet the three requirements specified in (c)(vi)(A) through (C) of this subsection.

(A) The unit qualifies as a cogeneration facility under section 3 (18)(B) of the Federal Power Act (16 U.S.C. 796 (18)(B)).

(B) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) You notify the permitting authority that the unit meets all of these criteria.

(vii) *Hazardous waste combustion units*. Units that meet either of the two criteria specified in (c)(vii)(A) or (B) of this subsection.

(A) Units for which you are required to get a permit under section 3005 of the Solid Waste Disposal Act.

(B) Units regulated under subpart EEE of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) (in effect on July 1, 2010).

(viii) *Materials recovery units*. Units that combust waste for the primary purpose of recovering metals, such as primary and secondary smelters;

(ix) *Air curtain incinerators*. Air curtain incinerators that burn only the materials listed in (c)(ix)(A) through (C) of this subsection are only required to meet the requirements under "Air Curtain Incinerators" in 40 CFR 60.2245 through 60.2260 (in effect on July 1, 2010).

(A) 100 percent wood waste.

(B) 100 percent clean lumber.

(C) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

(x) *Cyclonic barrel burners.* See 40 CFR 60.2265 (in effect on July 1, 2010).

(xi) *Rack, part, and drum reclamation units.* See 40 CFR 60.2265 (in effect on July 1, 2010).

(xii) *Cement kilns.* Kilns regulated under subpart LLL of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry) (in effect on July 1, 2010).

(xiii) *Sewage sludge incinerators.* Incineration units regulated under 40 CFR Part 60, (Standards of Performance for Sewage Treatment Plants) (in effect on July 1, 2010).

(xiv) *Chemical recovery units.* Combustion units burning materials to recover chemical constituents or to produce chemical compounds where there is an existing commercial market for such recovered chemical constituents or compounds. The seven types of units described in (c)(xiv)(A) through (G) of this subsection are considered chemical recovery units.

(A) Units burning only pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery process and reused in the pulping process.

(B) Units burning only spent sulfuric acid used to produce virgin sulfuric acid.

(C) Units burning only wood or coal feedstock for the production of charcoal.

(D) Units burning only manufacturing by-product streams/residues containing catalyst metals which are reclaimed and reused as catalysts or used to produce commercial grade catalysts.

(E) Units burning only coke to produce purified carbon monoxide that is used as an intermediate in the production of other chemical compounds.

(F) Units burning only hydrocarbon liquids or solids to produce hydrogen, carbon monoxide, synthesis gas, or other gases for use in other manufacturing processes.

(G) Units burning only photographic film to recover silver.

(xv) *Laboratory analysis units.* Units that burn samples of materials for the purpose of chemical or physical analysis.

(d) Exceptions.

(i) Physical or operational changes to a CISWI unit made primarily to comply with this section do not qualify as a "modification" or "reconstruction" (as defined in 40 CFR 60.2815, in effect on July 1, 2010).

(ii) Changes to a CISWI unit made on or after June 1, 2001, that meet the definition of "modification" or "reconstruction" as defined in 40 CFR 60.2815 (in effect on July 1, 2010) mean the CISWI unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 CFR Part 60, subpart CCCC by reference.

(e) A CISWI unit must comply with 40 CFR 60.2575 through 60.2875, in effect on July 1, 2010, which is adopted by reference. The federal rule contains these major components:

- Increments of progress towards compliance in 60.2575 through 60.2630;

- Waste management plan requirements in 60.2620 through 60.2630;

- Operator training and qualification requirements in 60.2635 through 60.2665;

- Emission limitations and operating limits in 60.2670 through 60.2685;

- Performance testing requirements in 60.2690 through 60.2725;

- Initial compliance requirements in 60.2700 through 60.2725;

- Continuous compliance requirements in 60.2710 through 60.2725;

- Monitoring requirements in 60.2730 through 60.2735;

- Recordkeeping and reporting requirements in 60.2740 through 60.2800;

- Title V operating permits requirements in 60.2805;

- Air curtain incinerator requirements in 60.2810 through 60.2870;

- Definitions in 60.2875; and

- Tables in 60.2875. In Table 1, the final control plan must be submitted before June 1, 2004, and final compliance must be achieved by June 1, 2005.

(i) Exception to adopting the federal rule. For purposes of this section, "administrator" includes the permitting authority.

(ii) Exception to adopting the federal rule. For purposes of this section, "you" means the owner or operator.

(iii) Exception to adopting the federal rule. For purposes of this section, each reference to "the effective date of state plan approval" means July 1, 2002.

(iv) Exception to adopting the federal rule. The Title V operating permit requirements in 40 CFR ((2805)) 60.2805 (a) are not adopted by reference. Each CISWI unit, regardless of whether it is a major or nonmajor unit, is subject to the air operating permit regulation, chapter 173-401 WAC, beginning on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

(v) Exception to adopting the federal rule. The following compliance dates apply:

(A) The final control plan (Increment 1) must be submitted no later than July 1, 2003. (See Increment 1 in Table 1.)

(B) Final compliance (Increment 2) must be achieved no later than July 1, 2005. (See Increment 2 in Table 1.)

(5) **Small municipal waste combustion units** constructed on or before August 30, 1999.

(a) Definition. "Municipal waste combustion unit" means any setting or equipment that combusts, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved air- or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air-curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define municipal waste combustion units:

(i) Municipal waste combustion units do not include the following units:

(A) Pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under the exemptions in this subsection (5)(c)(viii) and (ix).

(B) Cement kilns that combust municipal solid waste as specified under the exemptions in this subsection (5)(c)(x).

(C) Internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(ii) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(A) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(B) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(C) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

(b) Applicability. This section applies to a municipal waste combustion unit that meets these three criteria:

(i) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(ii) The municipal waste combustion unit commenced construction on or before August 30, 1999.

(iii) The municipal waste combustion unit is not exempt under (c) of this section.

(c) Exempted units. The following municipal waste combustion units are exempt from the requirements of this section:

(i) *Small municipal waste combustion units that combust less than 11 tons per day.* Units are exempt from this section if four requirements are met:

(A) The municipal waste combustion unit is subject to a federally enforceable order or order of approval limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator of the unit sends a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(ii) *Small power production units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (17)(C) of the Federal Power Act (16 U.S.C. 796 (17)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iii) *Cogeneration units.* Units are exempt from this section if four requirements are met:

(A) The unit qualifies as a small power production facility under section 3 (18)(C) of the Federal Power Act (16 U.S.C. 796 (18)(C)).

(B) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(C) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(D) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(iv) *Municipal waste combustion units that combust only tires.* Units are exempt from this section if three requirements are met:

(A) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits documentation to the permitting authority that the unit qualifies for the exemption.

(v) *Hazardous waste combustion units.* Units are exempt from this section if the units have received a permit under section 3005 of the Solid Waste Disposal Act.

(vi) *Materials recovery units.* Units are exempt from this section if the units combust waste mainly to recover metals. Primary and secondary smelters may qualify for the exemption.

(vii) *Cofired units.* Units are exempt from this section if four requirements are met:

(A) The unit has a federally enforceable order or order of approval limiting municipal solid waste combustion to no more than 30 percent of total fuel input by weight.

(B) The owner or operator notifies the permitting authority that the unit qualifies for the exemption.

(C) The owner or operator submits a copy of the federally enforceable order or order of approval to the permitting authority.

(D) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(viii) *Plastics/rubber recycling units.* Units are exempt from this section if four requirements are met:

(A) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined in 40 CFR 60.1940 (in effect on ~~((July 1, 2010))~~ May 1, 2012).

(B) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(C) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(D) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(ix) *Units that combust fuels made from products of plastics/rubber recycling plants.* Units are exempt from this section if two requirements are met:

(A) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(B) The unit does not combust any other municipal solid waste.

(x) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt.

(xi) *Air curtain incinerators.* If an air curtain incinerator as defined under 40 CFR 60.1910 (in effect on ((July 1, 2010) May 1, 2012)) combusts 100 percent yard waste, then those units must only meet the requirements under 40 CFR 60.1910 through 60.1930 (in effect on ((July 1, 2010) May 1, 2012)).

(d) Exceptions.

(i) Physical or operational changes to an existing municipal waste combustion unit made primarily to comply with this section do not qualify as a modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((July 1, 2010) May 1, 2012)).

(ii) Changes to an existing municipal waste combustion unit made on or after June 6, 2001, that meet the definition of modification or reconstruction, as those terms are defined in 40 CFR 60.1940 (in effect on ((July 1, 2010) May 1, 2012)), mean the unit is considered a new unit and subject to WAC 173-400-115, which adopts 40 CFR Part 60, subpart AAAA (in effect on ((July 1, 2010) May 1, 2012)).

(e) Municipal waste combustion units are divided into two subcategories based on the aggregate capacity of the municipal waste combustion plant as follows:

(i) Class I units. Class I units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((July 1, 2010) May 1, 2012)) for the specification of which units are included in the aggregate capacity calculation.

(ii) Class II units. Class II units are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" in 40 CFR 60.1940 (in effect on ((July 1, 2010) May 1, 2012)) for the specification of which units are included in the aggregate capacity calculation.

(f) Compliance option 1.

(i) A municipal solid waste combustion unit may choose to reduce, by the final compliance date of June 1, 2005, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste. The owner or operator must submit a final control plan and the notifications of achievement of increments of progress as specified in 40 CFR 60.1610 (in effect on ((July 1, 2010) May 1, 2012)).

(ii) The final control plan must, at a minimum, include two items:

(A) A description of the physical changes that will be made to accomplish the reduction.

(B) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((July 1, 2010) May 1, 2012)) to calculate the combustion capacity of a municipal waste combustion unit.

(iii) An order or order of approval containing a restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified in 40 CFR 60.1935 (d) and (e) (in effect on ((July 1, 2010) May 1, 2012)) to calculate the combustion capacity of a municipal waste combustion unit.

(g) Compliance option 2. The municipal waste combustion unit must comply with 40 CFR 60.1585 through 60.1905, and 60.1935 (in effect on ((July 1, 2010) May 1, 2012)), which is adopted by reference.

(i) The rule contains these major components:

(A) Increments of progress towards compliance in 60.1585 through 60.1640;

(B) Good combustion practices - Operator training in 60.1645 through 60.1670;

(C) Good combustion practices - Operator certification in 60.1675 through 60.1685;

(D) Good combustion practices - Operating requirements in 60.1690 through 60.1695;

(E) Emission limits in 60.1700 through 60.1710;

(F) Continuous emission monitoring in 60.1715 through 60.1770;

(G) Stack testing in 60.1775 through 60.1800;

(H) Other monitoring requirements in 60.1805 through 60.1825;

(I) Recordkeeping reporting in 60.1830 through 60.1855;

(J) Reporting in 60.1860 through 60.1905;

(K) Equations in 60.1935;

(L) Tables 2 through 8.

(ii) Exception to adopting the federal rule. For purposes of this section, each reference to the following is amended in the following manner:

(A) "State plan" in the federal rule means WAC 173-400-050(5).

(B) "You" in the federal rule means the owner or operator.

(C) "Administrator" includes the permitting authority.

(D) "The effective date of the state plan approval" in the federal rule means December 6, 2002.

(h) Compliance schedule.

(i) Small municipal waste combustion units must achieve final compliance or cease operation not later than December 1, 2005.

(ii) Small municipal waste combustion units must achieve compliance by May 6, 2005 for all Class II units, and by November 6, 2005 for all Class I units.

(iii) Class I units must comply with these additional requirements:

(A) The owner or operator must submit the dioxins/furans stack test results for at least one test conducted during or after 1990. The stack test must have been conducted

according to the procedures specified under 40 CFR 60.1790 (in effect on ((July 1, 2010)) May 1, 2012).

(B) Class I units that commenced construction after June 26, 1987, must comply with the dioxins/furans and mercury limits specified in Tables 2 and 3 in 40 CFR Part 60, subpart BBBB (in effect on February 5, 2001) by the later of two dates:

(I) December 6, 2003; or

(II) One year following the issuance of an order of approval (revised construction approval or operation permit) if an order or order of approval or operation modification is required.

(i) Air operating permit. Applicability to chapter 173-401 WAC, the air operating permit regulation, begins on July 1, 2002. See WAC 173-401-500 for the permit application requirements and deadlines.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-070 Emission standards for certain source categories. Ecology finds that the reasonable regulation of sources within certain categories requires separate standards applicable to such categories. The standards set forth in this section shall be the maximum allowable standards for emissions units within the categories listed. Except as specifically provided in this section, such emissions units shall not be required to meet the provisions of WAC 173-400-040, 173-400-050 and 173-400-060.

(1) Wigwam and silo burners.

(a) All wigwam and silo burners designed to dispose of wood waste must meet all provisions of WAC 173-400-040 (3), (4), (5), (6), (7), (8), and WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) as applicable.

(b) All wigwam and silo burners must use RACT. All emissions units shall be operated and maintained to minimize emissions. These requirements may include a controlled tangential vent overfire air system, an adequate underfire system, elimination of all unnecessary openings, a controlled feed and other modifications determined necessary by ecology or the permitting authority.

(c) It shall be unlawful to install or increase the existing use of any burner that does not meet all requirements for new sources including those requirements specified in WAC 173-400-040 and 173-400-050, except operating hours.

(d) The permit authority may establish additional requirements for wigwam and silo burners. These requirements may include but shall not be limited to:

(i) A requirement to meet all provisions of WAC 173-400-040 and 173-400-050. Wigwam and silo burners will be considered to be in compliance if they meet the requirements contained in WAC 173-400-040(2), visible emissions. An exception is made for a startup period not to exceed thirty minutes in any eight consecutive hours.

(ii) A requirement to apply BACT.

(iii) A requirement to reduce or eliminate emissions if ecology establishes that such emissions unreasonably interfere with the use and enjoyment of the property of others or are a cause of violation of ambient air standards.

(2) Hog fuel boilers.

(a) Hog fuel boilers shall meet all provisions of WAC 173-400-040 and 173-400-050(1), except that emissions may exceed twenty percent opacity for up to fifteen consecutive minutes once in any eight hours. The intent of this provision is to allow soot blowing and grate cleaning necessary to the operation of these units. This practice is to be scheduled for the same specific times each day and the permitting authority shall be notified of the schedule or any changes.

(b) All hog fuel boilers shall utilize RACT and shall be operated and maintained to minimize emissions.

(3) Orchard heating.

(a) Burning of rubber materials, asphaltic products, crankcase oil or petroleum wastes, plastic, or garbage is prohibited.

(b) It is unlawful to burn any material or operate any orchard-heating device that causes a visible emission exceeding twenty percent opacity, except during the first thirty minutes after such device or material is ignited.

(4) Grain elevators.

Any grain elevator which is primarily classified as a materials handling operation shall meet all the provisions of WAC 173-400-040 (2), (3), (4), and (5).

(5) Catalytic cracking units.

(a) All existing catalytic cracking units shall meet all provisions of WAC 173-400-040 (2), (3), (4), (5), (6), and (7) and:

(i) No person shall cause or allow the emission for more than three minutes, in any one hour, of an air contaminant from any catalytic cracking unit which at the emission point, or within a reasonable distance of the emission point, exceeds forty percent opacity.

(ii) No person shall cause or allow the emission of particulate material in excess of 0.46 grams per dry cubic meter at standard conditions (0.20 grains/dscf) of exhaust gas.

(b) All new catalytic cracking units shall meet all provisions of WAC 173-400-115.

(6) Other wood waste burners.

(a) Wood waste burners not specifically provided for in this section shall meet all applicable provisions of WAC 173-400-040. In addition, wood waste burners subject to WAC 173-400-050(4) or 173-400-115 (40 CFR 60 subpart DDDD) must meet all applicable provisions of those sections.

(b) Such wood waste burners shall utilize RACT and shall be operated and maintained to minimize emissions.

(7) Sulfuric acid plants.

No person shall cause to be discharged into the atmosphere from a sulfuric acid plant, any gases which contain acid mist, expressed as H₂SO₄, in excess of 0.15 pounds per ton of acid produced. Sulfuric acid production shall be expressed as one hundred percent H₂SO₄.

(8) ~~((Sewage sludge incinerators. Standards for the incineration of sewage sludge found in 40 CFR Part 503 subparts A (General Provisions) and E (Incineration) in effect on July 1, 2010, are adopted by reference.~~

~~(9)) Municipal solid waste landfills constructed, reconstructed, or modified before May 30, 1991.~~ A municipal solid waste landfill (MSW landfill) is an entire disposal facility in a contiguous geographical space where household waste is placed in or on the land. A MSW landfill

may also receive other types of waste regulated under Subtitle D of the Federal Recourse Conservation and Recovery Act including the following: Commercial solid waste, non-hazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. A MSW landfill may be either publicly or privately owned. A MSW landfill may be a new MSW landfill, an existing MSW landfill, or a lateral expansion. All references in this subsection to 40 CFR Part 60 rules mean those rules in effect on July 1, 2000.

(a) Applicability. These rules apply to each MSW landfill constructed, reconstructed, or modified before May 30, 1991; and the MSW landfill accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition. (See WAC 173-400-115 for the requirements for MSW landfills constructed, reconstructed, or modified on or after May 30, 1991.) Terms in this subsection have the meaning given them in 40 CFR 60.751, except that every use of the word "administrator" in the federal rules referred to in this subsection includes the "permitting authority."

(b) Exceptions. Any physical or operational change to an MSW landfill made solely to comply with these rules is not considered a modification or rebuilding.

(c) Standards for MSW landfill emissions.

(i) A MSW landfill having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a) in addition to the applicable requirements specified in this section.

(ii) A MSW landfill having design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b) in addition to the applicable requirements specified in this section.

(d) Recordkeeping and reporting. A MSW landfill must follow the recordkeeping and reporting requirements in 40 CFR 60.757 (submittal of an initial design capacity report) and 40 CFR 60.758 (recordkeeping requirements), as applicable, except as provided for under (d)(i) and (ii).

(i) The initial design capacity report for the facility is due before September 20, 2001.

(ii) The initial nonmethane organic compound (NMOC) emissions rate report is due before September 20, 2001.

(e) Test methods and procedures.

(i) A MSW landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compound emission rates following the procedures listed in 40 CFR 60.754, as applicable, to determine whether the rate equals or exceeds 50 megagrams per year.

(ii) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii) through the following procedures:

(A) The systems must follow the operational standards in 40 CFR 60.753.

(B) The systems must follow the compliance provisions in 40 CFR 60.755 (a)(1) through (a)(6) to determine whether the system is in compliance with 40 CFR 60.752 (b)(2)(ii).

(C) The system must follow the applicable monitoring provisions in 40 CFR 60.756.

(f) Conditions. Existing MSW landfills that meet the following conditions must install a gas collection and control system:

(i) The landfill accepted waste at any time since November 8, 1987, or the landfill has additional design capacity available for future waste deposition;

(ii) The landfill has design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters. The landfill may calculate design capacity in either megagrams or cubic meters for comparison with the exception values. Any density conversions shall be documented and submitted with the report; and

(iii) The landfill has a nonmethane organic compound (NMOC) emission rate of 50 megagrams per year or greater.

(g) Change in conditions. After the adoption date of this rule, a landfill that meets all three conditions in (e) of this subsection must comply with all the requirements of this section within thirty months of the date when the conditions were met. This change will usually occur because the NMOC emission rate equaled or exceeded the rate of 50 megagrams per year.

(h) Gas collection and control systems.

(i) Gas collection and control systems must meet the requirements in 40 CFR 60.752 (b)(2)(ii).

(ii) The design plans must be prepared by a licensed professional engineer and submitted to the permitting authority within one year after the adoption date of this section.

(iii) The system must be installed within eighteen months after the submittal of the design plans.

(iv) The system must be operational within thirty months after the adoption date of this section.

(v) The emissions that are collected must be controlled in one of three ways:

(A) An open flare designed and operated according to 40 CFR 60.18;

(B) A control system designed and operated to reduce NMOC by 98 percent by weight; or

(C) An enclosed combustor designed and operated to reduce the outlet NMOC concentration to 20 parts per million as hexane by volume, dry basis to three percent oxygen, or less.

(i) Air operating permit.

(i) A MSW landfill that has a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is not subject to the air operating permit regulation, unless the landfill is subject to chapter 173-401 WAC for some other reason. If the design capacity of an exempted MSW landfill subsequently increases to equal or exceed 2.5 million megagrams or 2.5 million cubic meters by a change that is not a modification or reconstruction, the landfill is subject to chapter 173-401 WAC on the date the amended design capacity report is due.

(ii) A MSW landfill that has a design capacity equal to or greater than 2.5 million megagrams or 2.5 million cubic meters on January 7, 2000, is subject to chapter 173-401 WAC beginning on the effective date of this section. (Note: Under 40 CFR 62.14352(e), an applicable MSW landfill must have submitted its application so that by April 6, 2001, the permitting authority was able to determine that it was timely and complete. Under 40 CFR 70.7(b), no source may

operate after the time that it is required to submit a timely and complete application.)

(iii) When a MSW landfill is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit for the landfill if the landfill is not subject to chapter 173-401 WAC for some other reason and if either of the following conditions are met:

(A) The landfill was never subject to the requirement for a control system under 40 CFR 62.14353; or

(B) The landfill meets the conditions for control system removal specified in 40 CFR 60.752 (b)(2)(v).

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-075 Emission standards for sources emitting hazardous air pollutants. (1) National emission standards for hazardous air pollutants (NESHAPs). 40 CFR Part 61 and Appendices in effect on ((July 1, 2010)) May 1, 2012, are adopted by reference. The term "administrator" in 40 CFR Part 61 includes the permitting authority.

(2) The permitting authority may conduct source tests and require access to records, books, files, and other information specific to the control, recovery, or release of those pollutants regulated under 40 CFR Parts 61, 62, 63 and 65, as applicable, in order to determine the status of compliance of sources of these contaminants and to carry out its enforcement responsibilities.

(3) Source testing, monitoring, and analytical methods for sources of hazardous air pollutants must conform with the requirements of 40 CFR Parts 51, 60, 61, 62, 63 and 65, as applicable.

(4) This section does not apply to any source operating under a waiver granted by EPA or an exemption granted by the president of the United States.

(5) Submit reports required by 40 CFR Parts 61 and 63 to the permitting authority, unless otherwise instructed.

(6) National Emission Standards for Hazardous Air Pollutants for Source Categories.

Adopt by reference.

(a) 40 CFR Part 63 and Appendices in effect on ((July 1, 2010)) May 1, 2012, as they apply to major ((stationary)) sources of hazardous air pollutants are adopted by reference, except for Subpart M, National Perchloroethylene Emission Standards for Dry Cleaning Facilities, as it applies to nonmajor sources. The term "administrator" in 40 CFR Part 63 includes the permitting authority.

Note: EPA signed a rule notice on April 17, 2012, and is submitting it for publication in the Federal Register. EPA Docket ID Number EPA-HQ-OAR-2010-0505. The final rule is available here: <http://www.epa.gov/airquality/oiland-gas/actions.html>. Ecology intends to adopt these revisions when finalizing this rule making. The final adopt by reference date in (a) of this subsection will reflect the date this revision is published in the Federal Register.

The rule notice covers the following rules:

- (i) **40 CFR Part 63 Subpart HH, as amended on April 17, 2012.**
- (ii) **40 CFR Part 63 Subpart HHH, as amended on April 17, 2012.**

(b) 40 CFR Part 63 and Appendices in effect on ((July 1, 2010)) May 1, 2012, as they apply to these specific area sources of hazardous air pollutants are adopted by reference:

(i) Subpart EEEEEEE, Primary Copper Smelting;

(ii) Subpart FFFFFF, Secondary Copper Smelting;

(iii) Subpart GGGGGG, Primary Nonferrous Metal;

(iv) Subpart SSSSSS, Pressed and Blown Glass Manufacturing;

(v) Subpart YYYYYY, Stainless and Nonstainless Steel Manufacturing (electric arc furnace);

(vi) Subpart EEE, Hazardous Waste Incineration;

(vii) Subpart IIIII, Mercury Cell Chlor-Alkali Plants;

(viii) Subpart LLL, Portland Cement;

(ix) Subpart X, Secondary Lead Smelting;

(x) MMMMM, Carbon black production;

(xi) NNNNNN, Chromium compounds; and

(xii) VVVVV, Chemical manufacturing for synthetic minors.

(xiii) **EEEEEEE, Gold Mine Ore Processing and Production.**

(c) **The area source rules in 40 CFR Part 63 and appendices in effect on May 1, 2012, (except subpart JJJJJJ) are adopted by reference as they apply to a stationary source located at a chapter 401 source subject to chapter 173-401 WAC, operating permit regulation.**

(d) **40 CFR Part 63, as amended by the proposed revisions in 76 Federal Register 80544 - 80552 (December 23, 2011) for Subpart JJJJJJ: Industrial, Commercial and Institutional Boilers, is adopted by reference. [FR DOC # 2011-31644]**

Note to reader: Should EPA finalize its rules before we finalize this rule making, ecology intends to adopt the final revisions to Subpart JJJJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers by reference when finalizing this rule making. If EPA does not finalize these revisions before ecology finalizes these rule revisions, then the draft version of Subpart JJJJJJ will not be adopted into the state rule.

(e) **40 CFR Part 63, as amended by the proposed revisions in 76 Federal Register 80627 - 80672 (December 23, 2011) Subpart DDDDD - National emission for major sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, is adopted by reference. [FR DOC # 2011-31667]**

Note to reader: Should EPA finalize its rules before we finalize this rule making, ecology intends to adopt the final revisions to Subpart DDDDD - National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters by reference when finalizing this rule making. If EPA does not finalize these revisions before ecology finalizes these rule revisions, then the draft version of Subpart DDDDD will not be adopted into the state rule.

(7) **Consolidated requirements for the synthetic organic chemical manufacturing industry.** 40 CFR Part 65, in effect on ((July 1, 2010)) May 1, 2012, is adopted by reference.

(8) Emission standards for perchloroethylene dry cleaners.

(a) Applicability.

(i) This section applies to all dry cleaning systems that use perchloroethylene (PCE). Each dry cleaning system must follow the applicable requirements in Table 1:

TABLE 1. PCE Dry Cleaner Source Categories

Dry cleaning facilities with:	Small area source purchases less than:	Large area source purchases between:	Major source purchases more than:
Only Dry-to-Dry Machines	140 gallons PCE/yr	140-2,100 gallons PCE/yr	2,100 gallons PCE/yr

(ii) Major sources. In addition to the requirements in this section, a dry cleaning system that is considered a major source according to Table 1 must follow the federal requirements for major sources in 40 CFR Part 63, Subpart M (in effect on ~~(July 1, 2010)~~ May 1, 2012).

(iii) It is illegal to operate a transfer machine and any machine that requires the movement of wet clothes from one machine to another for drying.

(b) Additional requirements for dry cleaning systems located in a residential building. A residential building is a building where people live.

(i) It is illegal to locate a dry cleaning machine using perchloroethylene in a residential building.

(ii) If you installed a dry cleaning machine using perchloroethylene in a building with a residence before December 21, 2005, you must remove the system by December 21, 2020.

(iii) In addition to requirements found elsewhere in this rule, you must operate the dry cleaning system inside a vapor barrier enclosure. A vapor barrier enclosure is a room that encloses the dry cleaning system. The vapor barrier enclosure must be:

(A) Equipped with a ventilation system that exhausts outside the building and is completely separate from the ventilation system for any other area of the building. The exhaust system must be designed and operated to maintain negative pressure and a ventilation rate of at least one air change per five minutes.

(B) Constructed of glass, plexiglass, polyvinyl chloride, PVC sheet 22 mil thick (0.022 in.), sheet metal, metal foil face composite board, or other materials that are impermeable to perchloroethylene vapor.

(C) Constructed so that all joints and seams are sealed except for inlet make-up air and exhaust openings and the entry door.

(iv) The exhaust system for the vapor barrier enclosure must be operated at all times that the dry cleaning system is in operation and during maintenance. The entry door to the enclosure may be open only when a person is entering or exiting the enclosure.

(c) Operations and maintenance record.

(i) Each dry cleaning facility must keep an operations and maintenance record that is available upon request.

(ii) The information in the operations and maintenance record must be kept on-site for five years.

(iii) The operations and maintenance record must contain the following information:

(A) Inspection: The date and result of each inspection of the dry cleaning system. The inspection must note the condition of the system and the time any leaks were observed.

(B) Repair: The date, time, and result of each repair of the dry cleaning system.

(C) Refrigerated condenser information. If you have a refrigerated condenser, enter this information:

(I) The air temperature at the inlet of the refrigerated condenser;

(II) The air temperature at the outlet of the refrigerated condenser;

(III) The difference between the inlet and outlet temperature readings; and

(IV) The date the temperature was taken.

(D) Carbon adsorber information. If you have a carbon adsorber, enter this information:

(I) The concentration of PCE in the exhaust of the carbon adsorber; and

(II) The date the concentration was measured.

(E) A record of the volume of PCE purchased each month must be entered by the first of the following month;

(F) A record of the total amount of PCE purchased over the previous twelve months must be entered by the first of each month;

(G) All receipts of PCE purchases; and

(H) A record of any pollution prevention activities that have been accomplished.

(d) General operations and maintenance requirements.

(i) Drain cartridge filters in their housing or other sealed container for at least twenty-four hours before discarding the cartridges.

(ii) Close the door of each dry cleaning machine except when transferring articles to or from the machine.

(iii) Store all PCE, and wastes containing PCE, in a closed container with no perceptible leaks.

(iv) Operate and maintain the dry cleaning system according to the manufacturer's specifications and recommendations.

(v) Keep a copy on-site of the design specifications and operating manuals for all dry cleaning equipment.

(vi) Keep a copy on-site of the design specifications and operating manuals for all emissions control devices.

(vii) Route the PCE gas-vapor stream from the dry cleaning system through the applicable equipment in Table 2:

TABLE 2. Minimum PCE Vapor Vent Control Requirements

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Refrigerated condenser for all machines installed after September 21, 1993.	Refrigerated condenser for all machines.	Refrigerated condenser with a carbon adsorber for all machines installed after September 21, 1993.	Refrigerated condenser with a carbon adsorber for all machines and a vapor barrier enclosure.

(e) Inspection.

(i) The owner or operator must inspect the dry cleaning system at a minimum following the requirements in Table 3 and Table 4:

TABLE 3. Minimum Inspection Frequency

Small area source	Large area source	Major source	Dry cleaner located in a building where people live
Once every 2 weeks.	Once every week.	Once every week.	Once every week.

TABLE 4. Minimum Inspection Frequency Using Portable Leak Detector

Small area source	Large area source	Major source	Dry cleaner located in a building where people may live
Once every month.	Once every month.	Once every month.	Once every week.

(ii) You must check for leaks using a portable leak detector.

(A) The leak detector must be able to detect concentrations of ((perchloroethylene [perchloroethylene])) perchloroethylene of 25 parts per million by volume.

(B) The leak detector must emit an audible or visual signal at 25 parts per million by volume.

(C) You must place the probe inlet at the surface of each component where leakage could occur and move it slowly along the joints.

(iii) You must examine these components for condition and perceptible leaks:

(A) Hose and pipe connections, fittings, couplings, and valves;

(B) Door gaskets and seatings;

(C) Filter gaskets and seatings;

(D) Pumps;

(E) Solvent tanks and containers;

(F) Water separators;

(G) Muck cookers;

(H) Stills;

(I) Exhaust dampers; and

(J) Cartridge filter housings.

(iv) The dry cleaning system must be inspected while it is operating.

(v) The date and result of each inspection must be entered in the operations and maintenance record at the time of the inspection.

(f) Repair.

(i) Leaks must be repaired within twenty-four hours of detection if repair parts are available.

(ii) If repair parts are unavailable, they must be ordered within two working days of detecting the leak.

(iii) Repair parts must be installed as soon as possible, and no later than five working days after arrival.

(iv) The date and time each leak was discovered must be entered in the operations and maintenance record.

(v) The date, time, and result of each repair must be entered in the operations and maintenance record at the time of the repair.

(g) Requirements for systems with refrigerated condensers. A dry cleaning system using a refrigerated condenser must meet all of the following requirements:

(i) Outlet air temperature.

(A) Each week the air temperature sensor at the outlet of the refrigerated condenser must be checked.

(B) The air temperature at the outlet of the refrigerated condenser must be less than or equal to 45°F (7.2°C) during the cool-down period.

(C) The air temperature must be entered in the operations and maintenance record manual at the time it is checked.

(D) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a dry-to-dry machine, dryer or reclaimer at the outlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C); and

(IV) The air temperature sensor must be labeled "RC outlet."

(ii) Inlet air temperature.

(A) Each week the air temperature sensor at the inlet of the refrigerated condenser installed on a washer must be checked.

(B) The inlet air temperature must be entered in the operations and maintenance record at the time it is checked.

(C) The air temperature sensor must meet these requirements:

(I) An air temperature sensor must be permanently installed on a washer at the inlet of the refrigerated condenser. The air temperature sensor must be installed by September 23, 1996, if the dry cleaning system was constructed before December 9, 1991.

(II) The air temperature sensor must be accurate to within 2°F (1.1°C).

(III) The air temperature sensor must be designed to measure at least a temperature range from 32°F (0°C) to 120°F (48.9°C).

(IV) The air temperature sensor must be labeled "RC inlet."

(iii) For a refrigerated condenser used on the washer unit of a transfer system, the following are additional requirements:

(A) Each week the difference between the air temperature at the inlet and outlet of the refrigerated condenser must be calculated.

(B) The difference between the air temperature at the inlet and outlet of a refrigerated condenser installed on a washer must be greater than or equal to 20°F (11.1°C).

(C) The difference between the inlet and outlet air temperature must be entered in the operations and maintenance record each time it is checked.

(iv) A converted machine with a refrigerated condenser must be operated with a diverter valve that prevents air drawn into the dry cleaning machine from passing through the refrigerated condenser when the door of the machine is open;

(v) The refrigerated condenser must not vent the air-PCE gas-vapor stream while the dry cleaning machine drum is rotating or, if installed on a washer, until the washer door is opened; and

(vi) The refrigerated condenser in a transfer machine may not be coupled with any other equipment.

(h) Requirements for systems with carbon adsorbers.

A dry cleaning system using a carbon adsorber must meet all of the following requirements:

(i) Each week the concentration of PCE in the exhaust of the carbon adsorber must be measured at the outlet of the carbon adsorber using a colorimetric detector tube.

(ii) The concentration of PCE must be written in the operations and maintenance record each time the concentration is checked.

(iii) If the dry cleaning system was constructed before December 9, 1991, monitoring must begin by September 23, 1996.

(iv) The colorimetric tube must meet these requirements:

(A) The colorimetric tube must be able to measure a concentration of 100 parts per million of PCE in air.

(B) The colorimetric tube must be accurate to within 25 parts per million.

(C) The concentration of PCE in the exhaust of the carbon adsorber must not exceed 100 ppm while the dry cleaning machine is venting to the carbon adsorber at the end of the last dry cleaning cycle prior to desorption of the carbon adsorber.

(v) If the dry cleaning system does not have a permanently fixed colorimetric tube, a sampling port must be provided within the exhaust outlet of the carbon adsorber. The sampling port must meet all of these requirements:

(A) The sampling port must be easily accessible;

(B) The sampling port must be located 8 stack or duct diameters downstream from a bend, expansion, contraction or outlet; and

(C) The sampling port must be 2 stack or duct diameters upstream from a bend, expansion, contraction, inlet or outlet.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-105 Records, monitoring, and reporting. The owner or operator of a source shall upon notification by the director of ecology, maintain records on the type and quantity of emissions from the source and other information deemed necessary to determine whether the source is in compliance with applicable emission limitations and control measures.

(1) **Emission inventory.** The owner(s) or operator(s) of any air contaminant source shall submit an inventory of emissions from the source each year. The inventory will include stack and fugitive emissions of particulate matter, PM-10, PM-2.5, sulfur dioxide, oxides of nitrogen, carbon monoxide, total reduced sulfur compounds (TRS), fluorides, lead, VOCs, ammonia, and other contaminants. The format for the submittal of these inventories will be specified by the permitting authority or ecology. When submittal of emission inventory information is requested, the emissions inventory shall be submitted no later than one hundred five days after the end of the calendar year. The owner(s) or operator(s) shall maintain records of information necessary to substantiate any reported emissions, consistent with the averaging times for the applicable standards. Emission estimates used in the inventory may be based on the most recent published EPA emission factors for a source category, or other information available to the owner(s) or operator(s), whichever is the better estimate.

(2) **Monitoring.** Ecology shall conduct a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants. As a part of this program, the director of ecology or an authorized representative may require any source under the jurisdiction of ecology to conduct stack and/or ambient air monitoring and to report the results to ecology.

(3) **Investigation of conditions.** Upon presentation of appropriate credentials, for the purpose of investigating conditions specific to the control, recovery, or release of air contaminants into the atmosphere, personnel from ecology or an authority shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing one or two families.

(4) **Source testing.** To demonstrate compliance, ecology or the authority may conduct or require that a test be conducted of the source using approved EPA methods from 40 CFR Parts 51, 60, 61 and 63 (in effect on ~~((July 1, 2010))~~ May 1, 2012) or procedures contained in "Source Test Manual - Procedures for Compliance Testing," state of Washington, department of ecology, as of September 20, 2004, on file at ecology. The operator of a source may be required to provide the necessary platform and sampling ports for ecology personnel or others to perform a test of an emissions unit. Ecology shall be allowed to obtain a sample from any emissions unit. The operator of the source shall be given an opportunity to observe the sampling and to obtain a sample at the same time.

(5) **Continuous monitoring and recording.** Owners and operators of the following categories of sources shall install, calibrate, maintain and operate equipment for continuously monitoring and recording those emissions specified.

(a) Fossil fuel-fired steam generators.

(i) Opacity, except where:

(A) Steam generator capacity is less than two hundred fifty million BTU per hour heat input; or

(B) Only gaseous fuel is burned.

(ii) Sulfur dioxide, except where steam generator capacity is less than two hundred fifty million BTU per hour heat input or if sulfur dioxide control equipment is not required.

(iii) Percent oxygen or carbon dioxide where such measurements are necessary for the conversion of sulfur dioxide continuous emission monitoring data.

(iv) General exception. These requirements do not apply to a fossil fuel-fired steam generator with an annual average capacity factor of less than thirty percent, as reported to the Federal Power Commission for calendar year 1974, or as otherwise demonstrated to ecology or the authority by the owner(s) or operator(s).

(b) **Sulfuric acid plants.** Sulfur dioxide where production capacity is more than three hundred tons per day, expressed as one hundred percent acid, except for those facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds.

(c) Fluid bed catalytic cracking units catalyst regenerators at petroleum refineries. Opacity where fresh feed capacity is more than twenty thousand barrels per day.

(d) Wood residue fuel-fired steam generators.

(i) Opacity, except where steam generator capacity is less than one hundred million BTU per hour heat input.

(ii) Continuous monitoring equipment. The requirements of (e) of this subsection do not apply to wood residue fuel-fired steam generators, but continuous monitoring equipment required by (d) of this subsection shall be subject to approval by ecology.

(e) Owners and operators of those sources required to install continuous monitoring equipment under this subsection shall demonstrate to ecology or the authority, compliance with the equipment and performance specifications and observe the reporting requirements contained in 40 CFR Part 51, Appendix P, Sections 3, 4 and 5 (in effect on ((July 1, 2010)) May 1, 2012).

(f) Special considerations. If for reason of physical plant limitations or extreme economic situations, ecology determines that continuous monitoring is not a reasonable requirement, alternative monitoring and reporting procedures will be established on an individual basis. These will generally take the form of stack tests conducted at a frequency sufficient to establish the emission levels over time and to monitor deviations in these levels.

(g) Exemptions. This subsection (5) does not apply to any emission unit which is:

(i) Required to continuously monitor emissions due to a standard or requirement contained in 40 CFR Parts 60, 61, 62, 63, or 75 or a permitting authority's adoption by reference of such federal standards. Emission units and sources subject to those standards shall comply with the data collection requirements that apply to those standards.

(ii) Not subject to an applicable emission standard.

(6) ~~((Change in raw materials or fuels for sources not subject to requirements of the operating permit program. Any~~

~~change or series of changes in raw material or fuel which will result in a cumulative increase in emissions of sulfur dioxide of forty tons per year or more over that stated in the initial inventory required by subsection (1) of this section shall require the submittal of sufficient information to ecology or the authority to determine the effect of the increase upon ambient concentrations of sulfur dioxide. Ecology or the authority may issue regulatory orders requiring controls to reduce the effect of such increases. Cumulative changes in raw material or fuel of less than 0.5 percent increase in average annual sulfur content over the initial inventory shall not require such notice.~~

((7))) No person shall make any false material statement, representation or certification in any form, notice or report required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit or order in force pursuant thereto.

((8))) (7) Continuous emission monitoring system operating requirements. All continuous emission monitoring systems (CEMS) required by 40 CFR Parts 60, 61, 62, 63, or 75, or a permitting authority's adoption of those federal standards must meet the continuous emission monitoring systems (CEMS) performance specifications and data recovery requirements imposed by those standards. All CEMS required under an order, PSD permit, or regulation issued by a permitting authority and not subject to CEMS performance specifications and data recovery requirements imposed by 40 CFR Parts 60, 61, 62, 63, or 75 must follow the continuous emission monitoring rule of the permitting authority, or if the permitting authority does not have a continuous emission monitoring rule, must meet the following requirements:

(a) The owner or operator shall recover valid hourly monitoring data for at least 95 percent of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrated that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonable preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(b) The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect on ((July 1, 2010)) May 1, 2012, and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA) 340/1-86-010.

(c) Monitoring data commencing on the clock hour and containing at least forty-five minutes of monitoring data must be reduced to one hour averages. Monitoring data for opacity is to be reduced to six minute block averages unless otherwise specified in the order of approval or permit. All monitoring data will be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit. After a failed quality assurance test or audit, no

valid data is collected until the monitoring system passes a quality assurance test or audit.

(d) Except for system breakdowns, repairs, calibration checks, and zero and span adjustments required under subsection (a) of this section, all continuous monitoring systems shall be in continuous operation.

(i) Continuous monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive ten second period and one cycle of data recording for each successive six minute period.

(ii) Continuous monitoring systems for measuring emissions other than opacity shall complete a minimum of one cycle of sampling, analyzing, and recording for each successive fifteen minute period.

(e) The owner or operator shall retain all monitoring data averages for at least five years, including copies of all reports submitted to the permitting authority and records of all repairs, adjustments, and maintenance performed on the monitoring system.

(f) The owner or operator shall submit a monthly report (or other frequency as directed by terms of an order, air operating permit or regulation) to the permitting authority within thirty days after the end of the month (or other specified reporting period) in which the data were recorded. The report required by this section may be combined with any excess emission report required by WAC 173-400-108. This report shall include:

(i) The number of hours that the monitored emission unit operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(ii) The date, time period, and cause of each failure to meet the data recovery requirements of (a) of this subsection and any actions taken to ensure adequate collection of such data;

(iii) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90 percent of the hours that the equipment (required to be monitored) was operated each day;

(iv) The results of all cylinder gas audits conducted during the month; and

(v) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

((9)) (8) No person shall render inaccurate any monitoring device or method required under chapter 70.94 or 70.120 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-110 New source review (NSR) for sources and portable sources. (1) Applicability.

(a) ((This section)) WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where ((an)) a permitting authority has adopted its own new source review ((rule)) regulations.

(b) This section applies to new sources and stationary sources as defined in RCW 70.94.030, and WAC 173-400-030, but does not include nonroad engines.

(c) For purposes of this section:

(i) "Establishment" means to begin actual construction;
(ii) "New source" includes:

(A) A modification to an existing stationary source, as "modification" is defined in WAC 173-400-030;

(B) The construction, modification, or relocation of a portable source as defined in WAC 173-400-030, except those relocating in compliance with WAC 173-400-036; ((and))

(C) The establishment of a new or modified toxic air pollutant source, as defined in WAC 173-460-020; and

(D) A major modification to an existing major stationary source, as defined in WAC 173-400-710 and 173-400-810.

(d) New source review of a modification is limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification. Review of a major modification must comply with WAC 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860, as applicable.

(e) The procedural requirements pertaining to NOC applications and orders of approval for new sources that are not major stationary sources, as defined in WAC 173-400-710 and 173-400-810, shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, Model Toxics Control Act, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW using the procedures outlined in WAC 173-340-710(9).

(2) ((Approval requirements)) Required permits. The applicant must evaluate the proposed project and submit an application addressing all applicable new source review requirements of this chapter.

(a) A notice of construction application must be filed and an order of approval must be issued by the permitting authority prior to the establishment of any new source except for those new sources or modifications exempt from permitting under subsections (4), (5), and (6) of this section.

(b) If the proposed project is a new major stationary source or a major modification, located in a designated nonattainment area, and if the project emits the air pollutant or precursors of the air pollutant for which the area is designated nonattainment, and the project meets the applicability criteria in WAC 173-400-820, then the project is subject to the permitting requirements of WAC 173-400-800 through 173-400-860.

(c) If the proposed project is a new major stationary source or a major modification that meets the applicability criteria of WAC 173-400-720, then the project is subject to the PSD permitting requirements of WAC 173-400-700 through 173-400-750.

(d) If the proposed project will increase emissions of toxic air pollutants regulated under chapter 173-460 WAC, then the project must meet all applicable requirements of that program.

(3) Modifications.

New source review is required for any modification to a stationary source that requires:

(a) An increase in a plant-wide cap₂ or ((requires))

(b) An increase in an emission unit or activity specific emission limit.

(4) Emission unit and activity exemptions.

The construction or modification of emission units or an activity in one of the categories listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The construction or modification of an emission unit or an activity exempt under this subsection does not require the filing of a notice of construction application.

(a) Maintenance/construction:

(i) Cleaning and sweeping of streets and paved surfaces;

(ii) Concrete application, and installation;

(iii) Dredging wet spoils handling and placement;

(iv) Paving application and maintenance. This provision does not exempt asphalt plants from this chapter;

(v) Plant maintenance and upkeep activities (grounds keeping, general repairs, house keeping, plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

(vi) Plumbing installation, plumbing protective coating application and maintenance activities;

(vii) Roofing application and maintenance;

(viii) Insulation application and maintenance;

(ix) Janitorial services and consumer use of janitorial products;

(x) Construction activities that do not result in new or modified stationary sources or portable stationary sources.

(b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks. Ecology strongly recommends that an owner or operator contact the permitting authority to determine the exemption status of storage tanks prior to their installation.

(i) Lubricating oil storage tanks. This provision does not exempt wholesale distributors of lubricating oils from this chapter;

(ii) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

(iii) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

(iv) Process and white water storage tanks;

(v) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260-gallon capacity (35 cubic feet);

(vi) Operation, loading and unloading of storage tanks, ≤ 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as listed in chapter 173-460 WAC, max. VP 550 mm mercury at 21°C;

(vii) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

(viii) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

(c) New or modified emission units with combined aggregate heat inputs to combustion units (excluding emergency engines exempted by subsection (4)(h)(xxxix) of this section), less than or equal to all of the following, as applicable:

(i) ≤ 500,000 Btu/hr using coal with ≤ 0.5% sulfur or other solid fuels with ≤ 0.5% sulfur;

(ii) ≤ 500,000 Btu/hr using used oil, per the requirements of RCW 70.94.610;

(iii) ≤ 400,000 Btu/hr using wood waste or paper;

(iv) ≤ 1,000,000 Btu/hr using gasoline, kerosene, #1, or #2 fuel oil and with ≤ 0.05% sulfur;

(v) ≤ 4,000,000 Btu/hr using natural gas, propane, or LPG.

(d) Material handling:

(i) Continuous digester chip feeders;

(ii) Grain elevators not licensed as warehouses or dealers by either the Washington state department of agriculture or the U.S. Department of Agriculture;

(iii) Storage and handling of water based lubricants for metal working where organic content of the lubricant is ≤ 10%;

(iv) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm mercury at 21°C, with lids or other appropriate closure.

(e) Water treatment:

(i) Septic sewer systems, not including active wastewater treatment facilities;

(ii) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

(iii) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

(iv) Process water filtration system and demineralizer vents;

(v) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

(vi) Demineralizer tanks;

(vii) Alum tanks;

(viii) Clean water condensate tanks.

(f) Environmental chambers and laboratory equipment:

(i) Environmental chambers and humidity chambers using only gases that are not toxic air pollutants listed in chapter 173-460 WAC;

(ii) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

(iii) Installation or modification of a single laboratory fume hood;

(iv) Laboratory research, experimentation, analysis and testing at sources whose primary purpose and activity is research or education. To be exempt, these sources must not engage in the production of products, or in providing commercial services, for sale or exchange for commercial profit

except in a de minimis manner. Pilot-plants or pilot scale processes at these sources are not exempt.

- (v) Laboratory calibration and maintenance equipment;
- (g) Monitoring/quality assurance/testing;
- (i) Equipment and instrumentation used for quality control/assurance or inspection purpose;
- (ii) Hydraulic and hydrostatic testing equipment;
- (iii) Sample gathering, preparation and management;
- (iv) Vents from emission monitors and other analyzers.
- (h) Miscellaneous:
 - (i) Single-family residences and duplexes;
 - (ii) Plastic pipe welding;
 - (iii) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
 - (iv) Comfort air conditioning;
 - (v) Flares used to indicate danger to the public;
 - (vi) Natural and forced air vents and stacks for bathroom/toilet activities;
 - (vii) Personal care activities;
 - (viii) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
 - (ix) Tobacco smoking rooms and areas;
 - (x) Noncommercial smokehouses;
 - (xi) Blacksmith forges for single forges;
 - (xii) Vehicle maintenance activities, not including vehicle surface coating;
 - (xiii) Vehicle or equipment washing (see (c) of this subsection for threshold for boilers);
 - (xiv) Wax application;
 - (xv) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
 - (xvi) Ozone generators and ozonation equipment;
 - (xvii) Solar simulators;
 - (xviii) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
 - (xix) Electrical circuit breakers, transformers, or switching equipment installation or operation;
 - (xx) Pulse capacitors;
 - (xxi) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
 - (xxii) Fire suppression equipment;
 - (xxiii) Recovery boiler blow-down tank;
 - (xxiv) Screw press vents;
 - (xxv) Drop hammers or hydraulic presses for forging or metal working;
 - (xxvi) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
 - (xxvii) Kraft lime mud storage tanks and process vessels;
 - (xxviii) Lime grits washers, filters and handling;
 - (xxix) Lime mud filtrate tanks;
 - (xxx) Lime mud water;
 - (xxxi) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
 - (xxxii) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;

(xxxiii) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C where no toxic air pollutants as listed under chapter 173-460 WAC are emitted;

(xxxiv) Surface coating, aqueous solution or suspension containing ≤ 1% (by weight) VOCs, or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC;

(xxxv) Cleaning and stripping activities and equipment using solutions having ≤ 1% VOCs (by weight) or ≤ 1% (by weight) toxic air pollutants. Acid solutions used on metallic substances are not exempt;

(xxxvi) Dip coating operations, using materials less than 1% VOCs (by weight) or ≤ 1% (by weight) toxic air pollutants as listed in chapter 173-460 WAC.

(xxxvii) Abrasive blasting performed inside a booth or hangar designed to capture the blast grit or overspray.

(xxxviii) For structures or items too large to be reasonably handled indoors, abrasive blasting performed outdoors that employs control measures such as curtailment during windy periods and enclosure of the area being blasted with tarps and uses either steel shot or an abrasive containing less than one percent (by mass) which would pass through a No. 200 sieve.

(xxxix) Stationary emergency internal combustion engines with an aggregate brake horsepower that is less than or equal to 500 brake horsepower.

(xl) Gasoline dispensing facilities with annual gasoline throughputs less than those specified in WAC 173-491-040 (4)(a). Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

(5) Exemptions based on emissions.

(a) Except as provided in this subsection:

(i) Construction of a new emissions unit that has a potential to emit below each of the levels listed in Table 110(5) Exemption levels is exempt from new source review.

(ii) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in Table 110(5) Exemption levels of this subsection is exempt from new source review.

(b) Greenhouse gas emissions are exempt from new source review requirements except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emission unit, may request that the permitting authority impose emission limits and/or operation limitations for greenhouse gas in any new source review order of approval.

Table 110(5) Exemption levels:

POLLUTANT	LEVEL (TONS PER YEAR)
Carbon monoxide	5.0
Lead	0.005
Nitrogen oxides	2.0
PM-10	0.75
PM-2.5	0.5
Total suspended particulates	1.25
Sulfur dioxide	2.0

POLLUTANT	LEVEL (TONS PER YEAR)
Volatile Organic Compounds, total	2.0
Ozone Depleting Substances, total	1.0
Toxic Air Pollutants	The de minimis emission rate specified for each TAP in WAC 173-460-150.

(6) Portable source with order of approval. A portable source is authorized to operate without obtaining a site-specific or a permitting authority specific approval order to relocate if the portable source complies with the provisions of WAC 173-400-036.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-111 Processing notice of construction applications for sources, stationary sources and portable sources. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations.

(1) Completeness determination.

(a) Within thirty days after receiving a notice of construction application, the permitting authority must either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application.

(b) A complete application contains all the information necessary for processing the application. At a minimum, the application must provide information on the nature and amounts of emissions to be emitted by the proposed new source as well as the location, design, construction, and operation of the new source as needed to enable the permitting authority to determine that the construction or modification will meet the requirements of WAC 173-400-113. Designating an application complete for purposes of permit processing does not preclude the reviewing authority from requesting or accepting any additional information.

(c) For a project subject to the special protection requirements for federal Class I areas under WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3). The applicant must send a copy of the application and all amendments to the application to the EPA and the responsible federal land manager.

(d) For a project subject to the major new source review requirements in WAC 173-400-800 through 173-400-860, the completeness determination includes a determination that the application includes all information required for review under those sections.

(e) An application is not complete until any permit application fee required by the permitting authority has been paid.

(2) Coordination with chapter 173-401 WAC, operating permit regulation. A person seeking approval to construct or modify a source that requires an operating permit may elect

to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the notice of construction application required by this section. A notice of construction application designated for integrated review must be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with WAC 173-400-171.

(3) Criteria for approval of a notice of construction application. An order of approval cannot be issued until the following criteria are met as applicable:

- (a) The requirements of WAC 173-400-112;
- (b) The requirements of WAC 173-400-113;
- (c) The requirements of WAC 173-400-117;
- (d) The requirements of WAC 173-400-171;
- ((d)) (e) The requirements of WAC 173-400-200 and 173-400-205;

((e))) (f) The requirements of WAC 173-400-700 through 173-400-750;

(g) The requirements of WAC 173-400-800 through 173-400-860((, as applicable)); and

((f))) (h) All fees required under chapter 173-455 WAC (or the applicable new source review fee table of the local air pollution control authority) have been paid.

(4) Final determination - Time frame and signature authority.

(a) Within sixty days of receipt of a complete notice of construction application, the permitting authority must either:

(i) Issue a final decision on the application; or

(ii) Initiate notice and comment for those projects subject to WAC 173-400-171 followed as promptly as possible by a final decision.

(b) Every final determination on a notice of construction application must be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority.

(5) Distribution of the final decision.

(a) The permitting authority must promptly provide copies of each order approving or denying a notice of construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

(b) If the new source is a major stationary source or the change is a major modification subject to the requirements of WAC 173-400-800 through 173-400-860, the permitting authority must:

(i) Submit any control technology (LAER) determination included in a final order of approval to the RACT/BACT/LAER clearinghouse maintained by EPA; and

(ii) Send a copy of the final approval order to EPA.

(6) Appeals. Any conditions contained in an order of approval, or the denial of a notice of construction application may be appealed to the pollution control hearings board as provided under chapters 43.21B RCW and 371-08 WAC.

(7) Construction time limitations.

(a) Approval to construct or modify a stationary source becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if

construction is not completed within a reasonable time. The permitting authority may extend the eighteen-month period upon a satisfactory showing by the permittee that an extension is justified.

(b) The extension of a project that is either a major stationary source, as defined in WAC 173-400-810, in a nonattainment area or a major modification, as defined in WAC 173-400-810, of a major stationary source in a nonattainment area must also require LAER, for the pollutants for which the area is classified as nonattainment, as LAER exists at the time of the extension for the pollutants that were subject to LAER in the original approval.

(c) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement construction date.

(8) Change of conditions or revisions to orders of approval.

(a) The owner or operator may request, at any time, a change in the conditions of an approval order and the permitting authority may approve the request provided the permitting authority finds that:

(i) The change in conditions will not cause the source to exceed an emissions standard set by regulation or rule;

(ii) No ambient air quality standard will be exceeded as a result of the change;

(iii) The change will not adversely impact the ability of the permitting authority to determine compliance with an emissions standard;

(iv) The revised order will continue to require BACT for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

(v) The revised order meets the requirements of WAC 173-400-111, 173-400-112, 173-400-113, 173-400-720, 173-400-830, and 173-460-040, as applicable.

(b) Actions taken under this subsection are subject to the public involvement provisions of WAC 173-400-171 or the permitting authority's public notice and comment procedures.

(c) The applicant must consider the criteria in 40 CFR 52.21(r)(4) as adopted by reference in WAC 173-400-720 or 173-400-830(3), as applicable, when determining which new source review permits are required.

(9) Fees. Chapter 173-455 WAC lists the required fees payable to ecology for various permit actions.

(10) Enforcement. All persons who receive an order of approval must comply with all approval conditions contained in the order of approval.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-112 ((Requirements for)) New sources in nonattainment areas—Review for compliance with regulations. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own new source review regulations. The permitting authority that is reviewing an application required by WAC 173-400-110(2) to establish a new source in a nonattainment area shall issue the order of

approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will ~~((employ BACT for all air contaminants, except that if the new source is a major stationary source or the proposed modification is a major modification it will))~~ achieve LAER for ~~((the)) any~~ air contaminants for which:

(a) The area has been designated nonattainment; and

~~((for which))~~ (b)(i) The proposed new source is major; or
(ii) The existing source is major and the major modification is ~~((major))~~ significant.

(3) The proposed new source will employ BACT for those air contaminants not subject to LAER that the new source will emit or for which the proposed modification will cause an emissions increase.

(4) The proposed new source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(5) If the proposal is a new major stationary source or a major modification as those terms are defined in WAC 173-400-810 then it must also comply with WAC 173-400-800 through 173-400-860.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-113 ((Requirements for)) New sources in attainment or unclassifiable areas—Review for compliance with regulations. WAC 173-400-110, 173-400-111, 173-400-112, and 173-400-113 apply statewide except where a permitting authority has adopted its own minor new source review regulations. The permitting authority that is reviewing an application to establish a new source or modification in an attainment or unclassifiable area shall issue an order of approval if it determines that the proposed project satisfies each of the following requirements:

(1) The proposed new source or modification will comply with all applicable new source performance standards, national emission standards for hazardous air pollutants, national emission standards for hazardous air pollutants for source categories, emission standards adopted under chapter 70.94 RCW and, for sources regulated by an authority, the applicable emission standards of that authority.

(2) The proposed new source or modification will employ BACT for all pollutants not previously emitted or whose emissions would increase as a result of the new source or modification.

(3) Allowable emissions from the proposed new source or the increase in emissions from the proposed modification

will not cause or contribute to a violation of any ambient air quality standard.

(4)(a) If the projected impact of the allowable emissions from the proposed new major stationary source (as defined in WAC 173-400-810) or the projected impact of the increase in allowable emissions from the proposed major modification (as defined in WAC 173-400-810) at any location within a nonattainment area does not exceed the following levels for the pollutants for which the area has been designated nonattainment, then the proposed new source or modification will not be considered to cause or contribute to a violation of an ambient air quality standard:

Table 4a: Cause or Contribute Threshold Values for Nonattainment Area Impacts

Pollutant	Annual Average	24-Hour Average	8-Hour Average	3-Hour Average	1-Hour Average
CO-	-		0.5 mg/m ³	-	2 mg/m ³
SO ₂	1.0 µg/m ³	5 µg/m ³	-	25 µg/m ³	30 µg/m ³
PM ₁₀	1.0 µg/m ³	5 µg/m ³	-	-	-
PM _{2.5}	0.3 µg/m ³	1.2 µg/m ³			
NO ₂	1.0 µg/m ³	-	-	-	-

(b) A project that results in a projected impact inside a nonattainment area above the appropriate value in Table 4a of this section may use an offsetting emission reduction adequate to reduce the projected impacts to the above values or less. If the proposed project is unable to reduce emissions or obtain offsetting emissions reductions adequate to reduce modeled impacts below the values in Table 4a of this section, then the permitting authority shall deny approval to construct and operate the proposed new major stationary source or major modification.

(5) ((If the proposed new source or the proposed modification will emit any toxic air pollutants regulated under chapter 173-460 WAC, then the source must meet all applicable requirements of that program.)) If the proposal is a new major stationary source or a major modification as defined in WAC 173-400-720, then it must also comply with WAC 173-400-700 through 173-400-750.

AMENDATORY SECTION (Amending Order 99-06, filed 8/15/01, effective 9/15/01)

WAC 173-400-114 Requirements for replacement or substantial alteration of emission control technology at an existing stationary source. (1) Any person proposing to replace or substantially alter the **emission control technology** installed on an existing **stationary source or emission unit** shall file a **notice of construction application** with the appropriate **authority**, or with **ecology** in areas or for **sources** over which **ecology** has jurisdiction. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

(2) ((For projects not otherwise reviewable under WAC 173-400-110, **ecology** or)) A project to replace or substantially alter emission control technology at an existing stationary source that results in an increase of any air contaminant is subject to new source review as provided in WAC 173-400-

110. For any other project to replace or significantly alter control technology the permitting authority may:

- (a) Require that the owner or operator employ **RACT** for the affected **emission unit**;
- (b) Prescribe reasonable operation and maintenance conditions for the control equipment; and
- (c) Prescribe other requirements as authorized by chapter 70.94 RCW.

(3) Within thirty days of receipt of a **notice of construction application** under this section **ecology** or the **authority** shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete **notice of construction application** under this section **ecology** or the **authority** shall either issue an **order of approval** or a proposed **RACT** determination for the proposed project.

(4) Construction shall not "**commence**," as defined in WAC 173-400-030, on a project subject to review under this section until **ecology** or the **authority** issues a final **order of approval**. However, any **notice of construction application** filed under this section shall be deemed to be approved without conditions if **ecology** or the **authority** takes no action within thirty days of receipt of a complete **notice of construction application**.

(5) Approval to replace or substantially alter **emission control technology** shall become invalid if construction is not **commenced** within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. **Ecology** or the **authority** may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-115 Standards of performance for new sources. NSPS. Standards of performance for new sources are called New Source Performance Standards, or NSPS.

(1) Adoption by reference.

(a) 40 CFR Part 60 and Appendices in effect on ((July 1, 2010)) May 1, 2012, are adopted by reference. Exceptions are listed in ((subsection (1)))(b) and (c) of this ((section)) subsection.

Note: EPA signed a rule notice on April 17, 2012, and is submitting it for publication in the Federal Register. EPA Docket ID Number EPA-HQ-OAR-2010-0505. The final rule is available here: <http://www.epa.gov/airquality/oiland-gas/actions.html>. Ecology intends to adopt these revisions when finalizing this rule making. The final adopt by reference date in (a) of this subsection will reflect the date this revision is published in the Federal Register.

The rule notice covers the following rules:

(i) 40 CFR Part 60, Subpart KKK—Standards of Performance for Equipment Leaks of VOC From Onshore Natural

Gas Processing Plants for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or before August 23, 2011, as amended on April 17, 2012.

(ii) 40 CFR Part 60, Subpart LLL—Standards of Performance for SO₂ Emissions From Onshore Natural Gas Processing for Which Construction, Reconstruction, or Modification Commenced After January 20, 1984, and on or before August 23, 2011.

(iii) 40 CFR Part 60, Subpart OOOO—Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.

(b) 40 CFR Part 60, as amended by the proposed revisions in 76 Federal Register 80488 - 80530, Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units (December 23, 2011), is adopted by reference. [FR DOC # 2011-31648]

Note to reader: Should EPA finalize its rules before we finalize this rule making, ecology intends to adopt the final revisions to Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units and 40 CFR 60.17 by reference when finalizing rule making. If EPA does not finalize these revisions before ecology finalizes these rule revisions, then the draft version of Subpart CCCC will not be adopted into the state rule.

(c) Exceptions to adopting 40 CFR Part 60 by reference.

(i) The term "administrator" in 40 CFR Part 60 includes the permitting authority.

(ii) The following sections and subparts of 40 CFR Part 60 are not adopted by reference:

(A) 40 CFR 60.5 (determination of construction or modification);

(B) 40 CFR 60.6 (review of plans);

(C) 40 CFR Part 60, subpart B (Adoption and Submittal of State Plans for Designated Facilities), and subparts C, Cb, Cc, Cd, Ce, BBBB, DDDD, FFFF, HHHH (emission guidelines); and

(D) 40 CFR Part 60, Appendix G, Provisions for an Alternative Method of Demonstrating Compliance With 40 CFR 60.43 for the Newton Power Station of Central Illinois Public Service Company.

(2) Where EPA has delegated to the permitting authority, the authority to receive reports under 40 CFR Part 60, from the affected facility in lieu of providing such report to EPA, the affected facility is required to provide such reports only to the permitting authority unless otherwise requested in writing by the permitting authority or EPA.

Note: Under RCW 80.50.020(14), larger energy facilities subject to subparts D, Da, GG, J, K, Kb, Y, KKK, LLL, and QQQ are regulated by the energy facility site evaluation council (EFSEC).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-117 Special protection requirements for federal Class I areas. (1) **Definitions.** The following definitions apply to this section:

(a) "**Adverse impact on visibility**" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of visibility impairment, and how these factors correlate with:

- (i) Times of visitor use of the federal Class I area; and
- (ii) The frequency and timing of natural conditions that reduce visibility.

(b) The terms "major stationary source," "major modification," and "net emissions increase" are ((as provided)) defined in WAC 173-400-720 for projects located in areas designated as attainment or unclassifiable for the pollutants proposed to increase as a result of the project and as defined in WAC 173-400-810 for projects located in areas designated as nonattainment for the pollutants proposed to increase as a result of the project.

(2) **Applicability.** The requirements of this section apply to all of the following permitting actions:

(a) A PSD permit application for a new major stationary source or a major modification; or

(b) Submittal of a notice of construction application for a major stationary source or a major modification to a stationary source in a nonattainment area, as either of those terms are defined in WAC ((173-400-720)) 173-400-810.

(3) Contents and distribution of application.

(a) The application shall include an analysis of the anticipated impacts of the project on visibility in any federal Class I area.

(b) The applicant must mail a copy of the application for the project and all amendments to the application to the permitting authority, EPA and to the responsible federal land managers. Ecology will provide a list of the names and addresses of the federal land manager.

(4) Notice to federal land manager.

(a) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) If, prior to receiving a notice of construction application or a PSD permit application, the permitting authority receives notice of a project described in subsection (2) of this section that may affect visibility in a federal Class I area, the permitting authority shall notify the responsible federal land manager within thirty days of the notification.

(5) Analysis by federal land manager.

(a) The permitting authority will consider any demonstration presented by the responsible federal land manager that emissions from a proposed new major stationary source or the net emissions increase from a proposed major modification described in subsection (2) of this section would have an adverse impact on visibility in any federal Class I area, provided that the demonstration is received by the permitting authority within thirty days of the federal land manager's receipt of the complete application.

(b) If the permitting authority concurs with the federal land manager's demonstration, the PSD permit or approval order for the project either shall be denied, or conditions shall be included in the approval order to prevent the adverse impact.

(c) If the permitting authority finds that the federal land manager's analysis does not demonstrate that the project will have an adverse impact on visibility in a federal Class I area, the permitting authority ((either)) shall explain its decision in compliance with the ((public)) notice ((required by WAC 173-400-730, or, in the case of)) requirements of WAC 173-400-171 for those permits subject to WAC 173-400-800 through 173-400-860. For permits subject to the prevention of significant deterioration program, the permitting authority shall state in the public notice ((of proposed action on a PSD permit application, state)) required by WAC 173-400-740 that an explanation of the decision appears in the Technical Support Document for the proposed permit.

(6) Additional requirements for projects that require a PSD permit.

(a) For sources impacting federal Class I areas, the permitting authority shall provide notice to EPA of every action related to consideration of the PSD permit.

(b) The permitting authority shall consider any demonstration received from the responsible federal land manager prior to the close of the public comment period on a proposed PSD permit that emissions from the proposed new major stationary source or the net emissions increase from a proposed major modification would have an adverse impact on the air quality-related values (including visibility) of any mandatory Class I federal area.

(c) If the permitting authority concurs with the demonstration, the PSD permit either shall be denied, or conditions shall be included in the PSD permit to prevent the adverse impact.

(7) Additional requirements for projects located in nonattainment areas. In reviewing a PSD permit application or notice of construction application for a new major stationary source or major modification proposed for construction in an area classified as nonattainment, the permitting authority must ensure that the source's emissions will be consistent with making reasonable progress toward meeting the national goal of preventing any future, and remedying any existing, impairment of visibility by human-caused air pollution in mandatory Class I federal areas. In determining the need for approval order conditions to meet this requirement, the permitting authority may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(8) Monitoring. The permitting authority may require post-construction monitoring of the impact from the project. The monitoring shall be limited to the impacts on visibility in any federal Class I area near the proposed project.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-118 Designation of Class I, II, and III areas. (1) Designation.

(a) Lands within the exterior boundaries of Indian reservations may be proposed for redesignation by an Indian governing body or EPA. This restriction does not apply to non-trust lands within the 1873 Survey Area of the Puyallup Indian Reservation.

(b) All areas of the state must be designated either Class I, II or III.

(i) The following areas are the Class I areas in Washington state:

- (A) Alpine Lakes Wilderness;
- (B) Glacier Peak Wilderness;
- (C) Goat Rocks Wilderness;
- (D) Adams Wilderness;
- (E) Mount Rainier National Park;
- (F) North Cascades National Park;
- (G) Olympic National Park;
- (H) Pasayten Wilderness; and
- (I) Spokane Indian Reservation.¹

(ii) All other areas of the state are Class II, but may be redesignated as provided in subsections (2) and (3) of this section.

¹. EPA redesignated this land based on a request from the Spokane Tribal Council. See 40 CFR 52.2497 and 56 FR 14862, April 12, 1991, for details.

(2) Restrictions on area classifications.

(a) Except for the Spokane Indian Reservation, the Class I areas listed in subsection (1) of this section may not be redesignated.

(b) Except as provided in (a) of this subsection, the following areas that exceed 10,000 acres in size may be redesignated as Class I or II:

- (i) Areas in existence on August 7, 1977:
 - (A) A national monument;
 - (B) A national primitive area;
 - (C) A national preserve;
 - (D) A national wild and scenic river;
 - (E) A national wildlife refuge;
 - (F) A national lakeshore or seashore; or
 - (G) A national recreation area.
- (ii) Areas established after August 7, 1977:
 - (A) A national park;
 - (B) A national wilderness area; or
 - (C) Areas proposed by ecology for designation or redesignation.

(3) Redesignation of area classifications.

(a) Ecology shall propose the redesignation of an area classification as a revision to the SIP.

(b) Ecology may submit to EPA a proposal to redesignate areas of the state as Class I or II if:

(i) Ecology followed the public involvement procedures in WAC 173-400-171(12);

(ii) Ecology explained the reasons for the proposed redesignation, including a description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation;

(iii) Ecology made available for public inspection at least thirty days before the hearing the explanation of the reasons for the proposed redesignation;

(iv) Ecology notified other states, tribal governing bodies, and federal land managers (as defined in 40 CFR 52.21 (b)(24)) whose lands may be affected by the proposed redesignation at least thirty days prior to the public hearing;

(v) Ecology consulted with the elected leadership of local governments in the area covered by the proposed redesignation before proposing the redesignation; and

(vi) Ecology followed these procedures when a redesignation includes any federal lands:

(A) Ecology notified in writing the appropriate federal land manager on the proposed redesignation. Ecology allowed forty-five days for the federal land manager to confer with ecology and to submit written comments.

(B) Ecology responded to any written comments from the federal land manager that were received within forty-five days of notification. Ecology's response was available to the public in advance of the notice of the hearing.

(I) Ecology sent the written comments of the federal land manager, along with ecology's response to those comments, to the public location as required in WAC 173-400-171 (2)(a).

(II) If ecology disagreed with the federal land manager's written comments, ecology published a list of any inconsistency between the redesignation and the comments of the federal land manager, together with the reasons for making the redesignation against the recommendation of the federal land manager.

(c) Ecology may submit to EPA a proposal to redesignate any area other than an area to which subsection (1) of this section applies as Class III if:

(i) The redesignation followed the public involvement requirements of WAC 173-400-171 and 173-400-118(3);

(ii) The redesignation has been specifically approved by the governor of Washington state, after consultation with the appropriate committees of the legislature if it is in session, or with the leadership of the legislature, if it is not in session;

(iii) The redesignation has been approved by local governments representing a majority of the residents of the area to be redesignated. The local governments enacted legislation or passed resolutions concurring in the redesignation;

(iv) The redesignation would not cause, or contribute to, a concentration of any air contaminant which would exceed any maximum allowable increase permitted under the classification of any other area or any National Ambient Air Quality Standard; and

(v) A PSD permit under WAC 173-400-720 for a new major stationary source or major modification could be issued only if the area in question were redesignated as Class III, and material submitted as part of that application was available for public inspection prior to any public hearing on redesignation of the area as Class III.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-136 Use of emission reduction credits (ERC). (1) **Permissible use.** An ERC may be used to:

(a) Satisfy the requirements for authorization of a bubble under WAC 173-400-120;

(b) As ((a part of a determination of "net emissions increase"; or

as)) an offsetting reduction to satisfy the requirements for new source review in WAC 173-400-830 or 173-400-113 (4) ((or));

(c) Or if the reduction meets the criteria to be a creditable contemporaneous emission reduction, to demonstrate a creditable contemporaneous emission reduction for ((permitting))

determining a net emissions increase under WAC ((173-400-720)) 173-400-700 through 173-400-750 and 173-400-800 through 173-400-860.

(2) **Surrender of ERC certificate.** When an ERC is used under subsection (1) of this section, the certificate for the ERC must be surrendered to the permitting authority. If only a portion of the ERC is used, the amended certificate will be returned to the owner.

(3) Conditions of use.

(a) An ERC may be used only for the air contaminants for which it was issued.

(b) The permitting authority may impose additional conditions of use to account for temporal and spatial differences between the emissions units that generated the ERC and the emissions units that use the ERC.

(4) **Sale of an ERC.** An ERC may be sold or otherwise transferred to a person other than the person to whom it was originally issued. Within thirty days after the transfer of ownership, the certificate must be surrendered to the issuing authority. After receiving the certificate, the issuing authority shall reissue the certificate to the new owner.

(5) **Redemption period.** An unused ERC expires ten years after date of original issue.

(6) **Discount due to change in SIP.** If reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard, issued ERCs may be discounted as necessary to reach attainment.

(a) Issued ERCs may be discounted if:

(i) Reductions in emissions beyond those identified in the SIP are required to meet an ambient air quality standard;

(ii) The ambient standard cannot be met through controls on operating sources; and

(iii) The plan must be revised.

(b) The discount shall not exceed the percentage of additional emission reduction needed to reach attainment.

(c) ERCs may be discounted by the permitting authority only after notice to the public according to WAC 173-400-171 and the owners of affected ERCs.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-171 Public notice and opportunity for public comment. The purpose of this section is to specify the requirements for notifying the public about air quality ((permit)) actions and to provide opportunities for the public to participate in those ((permit)) actions. This section applies statewide except that the requirements of WAC 173-400-171 (1) through (11) do not apply where the permitting authority has adopted its own public notice provisions.

(1) Applicability to prevention of significant deterioration, and relocation of portable sources.

This section does not apply to:

(a) A notice of construction application designated for integrated review with actions regulated by WAC 173-400-720. In such cases, compliance with the public notification requirements of WAC 173-400-740 is required.

(b) Portable source relocation notices as regulated by WAC 173-400-036, relocation of portable sources.

(2) Internet notice of application.

(a) For those applications and actions not subject to a mandatory public comment period per subsection (3) of this section, the permitting authority must post an announcement of the receipt of notice of construction applications and other proposed actions on the permitting authority's internet web site.

(b) The internet posting must remain on the permitting authority's web site for a minimum of fifteen consecutive days.

(c) The internet posting must include a notice of the receipt of the application, the type of proposed action, and a statement that the public may request a public comment period on the proposed action.

(d) Requests for a public comment period must be submitted to the permitting authority in writing via letter, fax, or electronic mail during the fifteen-day internet posting period.

(e) A public comment period must be provided for any application or proposed action that receives such a request. Any application or proposed action for which a public comment period is not requested may be processed without further public involvement at the end of the fifteen-day internet posting period.

(3) Actions subject to a mandatory public comment period.

The permitting authority must provide public notice and a public comment period before approving or denying any of the following types of applications or other actions:

(a) Any application, order, or proposed action for which a public comment period is requested in compliance with subsection (2) of this section.

(b) Any notice of construction application for a new or modified source, including the initial application for operation of a portable source, if there is an increase in emissions of any air pollutant at a rate above the emission threshold rate (defined in WAC 173-400-030) or any increase in emissions of a toxic air pollutant above the acceptable source impact levels as regulated under chapter 173-460 WAC; or

(c) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on ((July 1, 2010)) May 1, 2012) as part of review under WAC 173-400-110, 173-400-113, or 173-400-117((, or 173-400-720)); or

(d) Any order to determine reasonably available control technology, RACT; or

(e) An order to establish a compliance schedule issued under WAC 173-400-161, or a variance issued under WAC 173-400-180; or

Note: Mandatory notice is not required for compliance orders issued under WAC 173-400-230.

(f) An order to demonstrate the creditable height of a stack which exceeds the good engineering practice, GEP, formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation; or

(g) An order to authorize a bubble; or

(h) Any action to discount the value of an emission reduction credit, ERC, issued to a source per WAC 173-400-136; or

(i) Any regulatory order to establish best available retrofit technology, BART, for an existing stationary facility; or

(j) Any notice of construction application or regulatory order used to establish a creditable emission reduction; or

(k) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit; or

(l) The original issuance and the issuance of all revisions to a general order of approval issued under WAC 173-400-560 (this does not include coverage orders); or

(m) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area; or

(n) Any application or other action for which the permitting authority determines that there is significant public interest.

(4) Advertising the mandatory public comment period. Public notice of all applications, orders, or actions listed in subsection (3) of this section must be ((published in a newspaper of general circulation)) given by prominent advertisement in the area ((where the source or sources are or will be located)) affected. This public notice can be ((published)) given only after all of the information required by the permitting authority has been submitted and after the applicable preliminary determinations, if any, have been made. The notice must be ((published)) given before any of the applications or other actions listed in subsection (3) of this section are approved or denied. The applicant or other initiator of the action must pay the publishing cost of providing public notice.

(5) Information available for public review. The information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality, must be available for public inspection in at least one location near the proposed project. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

((Published)) Public notice components.

(a) The notice must include:

(i) The name and address of the owner or operator and the facility;

(ii) A brief description of the proposal and the type of facility, including a description of the facility's processes subject to the permit;

(iii) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(iv) The location where those documents made available for public inspection may be reviewed;

(v) A thirty-day period for submitting written comment to the permitting authority;

(vi) A statement that a public hearing will be held if the permitting authority determines that there is significant public interest;

((The time, date and location of the public hearing for those ecology only actions listed in WAC 173-400-171(12);

((viii))) The name, address, and telephone number and e-mail address of a person at the permitting authority from whom interested persons may obtain additional information, including copies of the permit draft, the application, all relevant supporting materials, including any compliance plan,

permit, and monitoring and compliance certification report, and all other materials available to the permitting authority that are relevant to the permit decision, unless the information is exempt from disclosure;

(b) For projects subject to special protection requirements for federal Class I areas, as required by WAC 173-400-117, public notice must include an explanation of the permitting authority's draft decision or state that an explanation of the draft decision appears in the support document for the proposed order of approval((and

((e) For a redesignation of an area under WAC 173-400-118, the notice must state that an explanation of the reasons for the proposed redesignation is available for review at the public location)).

(7) Length of the public comment period.

(a) The public comment period must ((be)) extend at least thirty days ((long)) prior to any hearing.

(b) If a public hearing is held, the public comment period must extend through the hearing date.

(c) The final decision cannot be issued until the public comment period has ended and any comments received during the public comment period have been considered.

(8) Requesting a public hearing. The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. All hearing requests must be submitted to the permitting authority in writing via letter, fax, or electronic mail. A request must indicate the interest of the entity filing it and why a hearing is warranted.

(9) Setting the hearing date and providing hearing notice. If the permitting authority determines that significant public interest exists, then it will hold a public hearing. The permitting authority will determine the location, date, and time of the public hearing.

(10) Notice of public hearing.

(a) At least thirty days prior to the hearing the permitting authority will provide notice of the hearing as follows:

(i) ((Publish the)) Give public hearing notice ((of public hearing in a newspaper of general circulation)) by prominent advertisement in the area ((where the source or sources are or will be located)) affected; and

(ii) Mail the notice of public hearing to ((the applicant and to)) any person who submitted written comments on the application or requested a public hearing and in the case of a permit action, to the applicant.

(b) This notice must include the date, time and location of the public hearing and the information described in subsection (6) of this section.

(c) The applicant must pay all publishing costs associated with meeting the requirements of this subsection.

(11) Notifying the EPA. The permitting authority must send a copy of the notice for all actions subject to the mandatory public comment period to the EPA Region 10 regional administrator.

(12) Special requirements for ecology only actions.

(a) ((Ecology must comply with the requirements of 40 CFR 51.102, in effect on July 1, 2010, on the following ecology only actions:

((i) A Washington state recommendation to EPA that will be submitted by the director of ecology for approval of a SIP

revision including plans for attainment, maintenance, and visibility protection;

((ii) A Washington state recommendation to EPA for designation, redesignation, or a change of boundaries of an attainment area, or nonattainment area, or an unclassifiable area;

((iii) A Washington state recommendation to EPA to redesignate Class I, II, or III areas under WAC 173-400-118.

(b) The notice must comply with subsection (10) of this section.)) This subsection applies to ecology only actions including:

(i) A Washington state recommendation to EPA for the designation of an area as attainment, nonattainment or unclassifiable after EPA promulgation of a new or revised ambient air quality standard or for the redesignation of an unclassifiable or attainment area to nonattainment;

(ii) A Washington state submittal of a SIP revision to EPA for approval including plans for attainment and maintenance of ambient air quality standards, plans for visibility protection, requests for revision to the boundaries of attainment and maintenance areas, requests for redesignation of Class I, II, or III areas under WAC 173-400-118, and rules to strengthen the SIP.

(b) Ecology must provide a public hearing or an opportunity for requesting a public hearing on an ecology only action. The notice providing the opportunity for a public hearing must specify the manner and date by which a person may request the public hearing and either provide the date, time and place of the proposed hearing or specify that ecology will publish a notice specifying the date, time and place of the hearing at least thirty days prior to the hearing. When ecology provides the opportunity for requesting a public hearing, the hearing must be held if requested by any person. Ecology may cancel the hearing if no request is received.

(c) The public notice for ecology only actions must comply with the requirements of 40 CFR 51.102 in effect on May 1, 2012.

(13) Other requirements of law. Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-560 General order of approval. In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may apply for coverage under a general order of approval issued under this section. Coverage under a general order of approval satisfies the requirement for new source review under RCW 70.94.152.

(1) **Issuance of general orders of approval.** A permitting authority may issue a general order of approval applicable to a specific type of emission unit or source, not including nonroad engines as defined in section 216 of the Federal Clean Air Act, subject to the conditions in this section. A general order of approval shall identify criteria by which an emission unit or source may qualify for coverage under the associated general order of approval and shall include terms and conditions under which the owner or operator agrees to

install and/or operate the covered emission unit or source. At a minimum, these terms and conditions shall include:

- (a) Applicable emissions limitations and/or control requirements;
- (b) Best available control technology;
- (c) Appropriate operational restrictions, such as:
 - (i) Criteria related to the physical size of the unit(s) covered;
 - (ii) Criteria related to raw materials and fuels used;
 - (iii) Criteria related to allowed or prohibited locations; and
 - (iv) Other similar criteria determined by a permitting authority;
- (d) Monitoring, reporting and recordkeeping requirements to ensure compliance with the applicable emission limits and control requirements;
- (e) Appropriate initial and periodic emission testing requirements;
- (f) Compliance with chapter 173-460 WAC, WAC 173-400-112 and 173-400-113 ((3) and (4)) as applicable;
- (g) Compliance with 40 CFR Parts 60, 61, 62, and 63; and
- (h) The application and approval process to obtain coverage under the specific general order of approval.

(2) **Public comment.** Compliance with WAC 173-400-171 is required for a proposed new general order of approval or modification of an existing general order of approval.

(3) **Modification of general orders of approval.** A permitting authority may review and modify a general order of approval at any time. Only the permitting authority that issued a general order of approval may modify that general order of approval. Modifications to general orders of approval shall follow the procedures of this regulation and shall only take effect prospectively.

(4) Application for coverage under a general order of approval.

(a) In lieu of applying for an individual order of approval under WAC 173-400-110, an owner or operator of an emission unit or source may apply for and receive coverage from a permitting authority under a general order of approval if:

(i) The owner or operator of the emission unit or source applies for coverage under a general order of approval in accordance with this regulation and any conditions of the approval related to application for and granting coverage under the general order of approval;

(ii) The emission unit or source meets all the qualifications listed in the requested general order of approval;

(iii) The requested emission unit or source is not part of a new major stationary source or major modification of a major stationary source subject to the requirements of WAC ((173-400-112 or 173-400-720)) 173-400-113 (3) and (4), 173-400-700 through 173-400-750 or 173-400-800 through 173-400-860; and

(iv) The requested emission unit or source does not trigger applicability of the operating permit program under chapter 173-401 WAC or trigger a required modification of an existing operating permit.

(b) Owners or operators of emission units or sources applying for coverage under a general order of approval shall do so using the forms supplied by a permitting authority and

include the required fee. The application must include all information necessary to determine qualification for, and to assure compliance with, a general order of approval.

(c) An application shall be incomplete until a permitting authority has received any required fees.

(d) The owner or operator of a new source or modification of an existing source that qualifies for coverage under a general order of approval may not begin actual construction of the new source or modification until its application for coverage has been approved or accepted under the procedures established in subsection (5) of this section.

(5) **Processing applications for coverage under a general order of approval.** Each general order of approval shall include a section on how an applicant is to request coverage and how the permitting authority will grant coverage. The section of the general order of approval will include either the method in (a) or (b) of this subsection to describe the process for the applicant to be granted coverage.

(a) Within thirty days of receipt of an application for coverage under a general order of approval, the permitting authority shall notify an applicant in writing that the application is incomplete, approved, or denied. If an application is incomplete, the permitting authority shall notify an applicant of the information needed to complete the application. If an application is denied, the permitting authority shall notify an applicant of the reasons why the application is denied. Coverage under a general order of approval is effective as of the date of issuance of approval by the permitting authority.

(b) The applicant is approved for coverage under the general order of approval thirty-one days after an application for coverage is received by the permitting authority, unless the owner or operator receives a letter from the permitting authority, postmarked within thirty days of when the application for coverage was received by the permitting authority, notifying the owner or operator that the emissions unit or source does not qualify for coverage under the general order of approval. The letter denying coverage shall notify the applicant of the disqualification and the reasons why coverage is denied.

(6) **Termination of coverage under a general order of approval.** An owner or operator who has received approval of an application for coverage under a general order of approval may later request to be excluded from coverage under that general order of approval by applying to the same permitting authority for an individual order of approval, under WAC 173-400-110, or for coverage under another general order of approval. If the same permitting authority issues an individual order of approval or other permit or order serving the same purpose as the original general order of approval, or approves coverage under a different general order of approval, coverage under the original general order of approval is automatically terminated, effective on the effective date of the individual order of approval, order or permit or new general order of approval.

(7) **Failure to qualify or comply.** An owner or operator who requests and is granted approval for coverage under a general order of approval shall be subject to enforcement action for establishment of a new source in violation of WAC 173-400-110 if a decision to grant coverage under a general

order of approval was based upon erroneous information submitted by the applicant.

AMENDATORY SECTION (Amending Order 06-03, filed 5/8/07, effective 6/8/07)

WAC 173-400-710 Definitions. (1) ((The definitions in WAC 173-400-030 are to be used in WAC 173-400-700 through 173-400-750 unless:

(a) A term is defined differently in WAC 173-400-710 for use in the major source permitting requirements in WAC 173-400-700 through 173-400-750; or

(b) A term is defined differently in the federal program requirements adopted by reference in WAC 173-400-720.)) For purposes of WAC 173-400-720 through 173-400-750 the definitions in 40 CFR 52.21(b), adopted by reference in WAC 173-400-720 (4)(a)(iv), are to be used, except: The definition of "secondary emissions" as defined in WAC 173-400-030 will be used.

(2) All usage of the term "source" in WAC 173-400-710 through 173-400-750 and in 40 CFR 52.21 as adopted by reference is to be interpreted to mean "stationary source" as defined in 40 CFR 52.21 (b)(5). A stationary source (or source) does not include emissions resulting directly from an internal combustion engine for transportation purposes, from a nonroad engine, or a nonroad vehicle as defined in section 216 of the Federal Clean Air Act.

AMENDATORY SECTION (Amending Order 11-04, filed 8/10/11, effective 9/10/11)

WAC 173-400-720 Prevention of significant deterioration (PSD). (1) No major stationary source or major modification to which the requirements of this section apply is authorized to begin actual construction without having received a PSD permit.

(2) **Early planning encouraged.** In order to develop an appropriate application, the source should engage in an early planning process to assess the needs of the facility. An opportunity for a preapplication meeting with ecology is available to any potential applicant.

(3) **Enforcement.** Ecology or the permitting authority with jurisdiction over the source under chapter 173-401 WAC, the Operating permit regulation, shall:

(a) Receive all reports required in the PSD permit;

(b) Enforce the requirement to apply for a PSD permit when one is required; and

(c) Enforce the conditions in the PSD permit.

(4) **Applicable requirements.**

(a) A PSD permit must assure compliance with the following requirements:

(i) WAC 173-400-113 ((3) and) (1) through (4)((-));

(ii) WAC 173-400-117 - Special protection requirements for federal Class I areas((-)).

(b) The review of a PSD permit must also include an evaluation of the impacts of allowable emissions during stationary source startup and shutdown on:

(i) Protection of increment;

(ii) Air quality related values;

(iii) ((The proposed major new source or major modification will comply with all applicable new source perfor-

mance standards (40 CFR Part 60), National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61), and emission standards adopted under chapter 70.94 RCW that have been incorporated into the Washington state implementation plan)) WAC 173-400-200;

(iv) WAC 173-400-205; and

((4))) (v) The following subparts of 40 CFR 52.21, in effect on July 20, 2011, which are adopted by reference. Exceptions are listed in ((3)) (c)(i), (ii), ((and)) (iii), and (iv) of this subsection:

Section	Title
40 CFR 52.21 (a)(2)	Applicability Procedures.
40 CFR 52.21 (b)	Definitions, except the definition of "secondary emissions."
40 CFR 52.21 (c)	Ambient air increments.
40 CFR 52.21 (d)	Ambient air ceilings.
40 CFR 52.21 (h)	Stack heights.
40 CFR 52.21 (i)	Review of major stationary sources and major modifications - source applicability and exemptions.
40 CFR 52.21 (j)	Control technology review.
40 CFR 52.21 (k)	Source impact analysis.
40 CFR 52.21 (l)	Air quality models.
40 CFR 52.21 (m)	Air quality analysis.
40 CFR 52.21 (n)	Source information.
40 CFR 52.21 (o)	Additional impact analysis.
40 CFR 52.21 (p)(1) through (4)	Sources impacting federal Class I areas - additional requirements
40 CFR 52.21 (r)	Source obligation.
40 CFR 52.21 (v)	Innovative control technology.
40 CFR 52.21 (w)	Permit rescission.
40 CFR 52.21 (aa)	Actuals Plantwide Applicability Limitation.

((3)) (c) Exceptions to adopting 40 CFR 52.21 by reference.

(i) Every use of the word "administrator" in 40 CFR 52.21 means ecology except for the following:

(A) In 40 CFR 52.21 (b)(17), the definition of federally enforceable, "administrator" means the EPA administrator.

(B) In 40 CFR 52.21 (l)(2), air quality models, "administrator" means the EPA administrator.

(C) In 40 CFR 52.21 (b)(43) the definition of prevention of significant deterioration program, "administrator" means the EPA administrator.

(D) In 40 CFR 52.21 (b)(48)(ii)(c) related to regulations promulgated by the administrator, "administrator" means the EPA administrator.

(E) In 40 CFR 52.21 (b)(50)(i) related to the definition of a regulated NSR pollutant, "administrator" means the EPA administrator.

(F) In 40 CFR 52.21 (b)(37) related to the definition of repowering, "administrator" means the EPA administrator.

(G) In 40 CFR 52.21 (b)(51) related to the definition of reviewing authority, "administrator" means the EPA administrator.

(ii) Each reference in 40 CFR 52.21(i) to "paragraphs (j) through (r) of this section" is amended to state "paragraphs (j) through (p) (1) - (4) of this section, paragraph (r) of this section, WAC 173-400-720, and 173-400-730."

(iii) The following paragraphs replace the designated paragraphs of 40 CFR 52.21:

(A) In 40 CFR 52.21 (b)(1)(i)(a) and (b)(1)(iii)(h), the size threshold for municipal waste incinerators is changed to 50 tons of refuse per day.

(B) 40 CFR 52.21 (b)(23)(i) After the entry for municipal solid waste landfills emissions, add Ozone Depleting Substances: 100 tpy.

(C) 40 CFR 52.21(c) after the effective date of EPA's incorporation of this section into the Washington state implementation plan, the concentrations listed in WAC 173-400-116(2) are excluded when determining increment consumption.

(D) 40 CFR 52.21 (r)(6)

"The provisions of this paragraph (r)(6) apply with respect to any regulated NSR pollutant from projects at an existing emissions unit at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a ((reasonable possibility that a)) project that is not a part of a major modification that may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in paragraphs 40 CFR 52.21 (b)(41)(ii)(a) through (c) for calculating projected actual emissions.

(i) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

((A)) (a) A description of the project;
((B)) (b) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and
((C)) (c) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph 40 CFR 52.21 (b)(41)(ii)(c) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(ii) The owner or operator shall submit a copy of the information set out in paragraph 40 CFR 52.21 (r)(6)(i) to the permitting authority before beginning actual construction. This information may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this paragraph (r)(6)(ii) shall be construed to require the owner or operator of such a unit to obtain any PSD determination from the permit-

(iii)

ting authority before beginning actual construction.

The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in paragraph 40 CFR 52.21 (r)(6)(i)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity of or potential to emit that regulated NSR pollutant at such emissions unit. ((For purposes of this paragraph (r)(6)(iii), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in 40 CFR 52.21 (b)(1)(iii) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.))

(iv)

The owner or operator shall submit a report to the permitting authority within 60 days after the end of each year during which records must be generated under paragraph 40 CFR 52.21 (r)(6)(iii) setting out the unit's annual emissions((, as monitored pursuant to 40 CFR 52.21 (r)(6)(iii))) during the calendar year that preceded submission of the report.

(v)

The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in paragraph 40 CFR 52.21 (r)(6)(i), exceed the baseline actual emissions (as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c)), by a significant amount (as defined in paragraph 40 CFR 52.21 (b)(23)) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to paragraph 40 CFR 52.21 (r)(6)(i)(c). Such report shall be submitted to the permitting authority within 60 days after the end of such year. The report shall contain the following:

The name, address and telephone number of the major stationary source;
The annual emissions as calculated pursuant to paragraph (r)(6)(iii) of this section; and
Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection)."

(E) 40 CFR 52.21 (r)(7) "The owner or operator of the source shall submit the information required to be documented and maintained pursuant to paragraphs 40 CFR 52.21 (r)(6)(iv) and (v) annually within 60 days after the anniversary date of the original analysis. The original analysis and annual reviews shall also be available for review upon a

request for inspection by the permitting authority or the general public pursuant to the requirements contained in 40 CFR 70.4 (b)(3)(viii)."

(F) 40 CFR 52.21 (aa)(2)(ix) "PAL permit means the PSD permit, an ecology issued order of approval issued under WAC 173-400-110, or regulatory order issued under WAC 173-400-091 issued by ecology that establishes a PAL for a major stationary source."

(G) 40 CFR 52.21 (aa)(5) "Public participation requirements for PALs. PALs for existing major stationary sources shall be established, renewed, or expired through the public participation process in WAC 173-400-171. A request to increase a PAL shall be processed in accordance with the application processing and public participation process in WAC 173-400-730 and 173-400-740."

(H) 40 CFR 52.21 (aa)(9)(i)(b) "Ecology, after consultation with the permitting authority, shall decide whether and how the PAL allowable emissions will be distributed and issue a revised order, order of approval or PSD permit incorporating allowable limits for each emissions unit, or each group of emissions units, as ecology determines is appropriate."

(I) 40 CFR 52.21 (aa)(14) "Reporting and notification requirements. The owner or operator shall submit semiannual monitoring reports and prompt deviation reports to the permitting authority in accordance with the requirements in chapter 173-401 WAC. The reports shall meet the requirements in paragraphs 40 CFR 52.21 (aa)(14)(i) through (iii)."

(J) 40 CFR 52.21 (aa)(14)(ii) "Deviation report. The major stationary source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to WAC 173-401-615 (3)(b) and within the time limits prescribed shall satisfy this reporting requirement. The reports shall contain the information found at WAC 173-401-615(3)."

(iv) 40 CFR 52.21 (r)(2) is not adopted by reference.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-730 Prevention of significant deterioration application processing procedures. (1) Application submittal.

(a) The applicant shall submit an application that provides complete information necessary for ecology to determine compliance with all PSD program requirements.

(b) The applicant shall submit complete copies of its PSD application or an application to increase a PAL, distributed in the following manner:

(i) Three copies to ecology: Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600.

(ii) One copy to each of the following federal land managers:

(A) U.S. Department of the Interior - National Park Service; and

(B) U.S. Department of Agriculture - U.S. Forest Service.

(iii) One copy to the permitting authority with authority over the source under chapter 173-401 WAC.

(iv) One copy to EPA.

(c) Application submittal and processing for the initial request, renewal or expiration of a PAL under 40 CFR 52.21(aa) shall be done as provided in 40 CFR 52.21(aa)(3) - (5), which is adopted by reference in WAC 173-400-720 (4)(a)(iv), except public participation must comply with WAC ((173-400-720 (4)(b)(iii)(F))) 173-400-740.

(2) Application processing.

(a) Completeness determination.

(i) Within thirty days after receiving a PSD permit application, ecology shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Ecology may request additional information clarifying aspects of the application after it has been determined to be complete.

(ii) The effective date of the application is the date on which ecology notifies the applicant that the application is complete pursuant to (a)(i) of this subsection.

(iii) If an applicant fails or refuses to correct deficiencies in the application, the permit may be denied and appropriate enforcement action taken.

(iv) The permitting authority shall send a copy of the completeness determination to the responsible federal land manager.

(b) Preparation and issuance of the preliminary determination.

(i) When the application has been determined to be complete, ecology shall begin developing the preliminary determination to approve or deny the application.

(ii) (Within one year) As expeditiously as possible after receipt of a complete application, ecology shall provide the applicant with a preliminary determination along with a technical support document and a public notice.

(c) Issuance of the final determination.

(i) Ecology shall make no final decision until the public comment period has ended and all comments received during the public comment period have been considered.

(ii) Within one year of the date of receipt of the complete application and as expeditiously as possible after the close of the public comment period, or hearing if one is held, ecology shall prepare and issue the final determination.

(d) Once the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a determination will be either the date of issuance of the final determination, or a later date if specified in the final determination.

Until the PSD program set forth in WAC 173-400-700 through 173-400-750 is incorporated into the Washington SIP, the effective date of a final determination is one of the following dates:

(i) If no comments on the preliminary determination were received, the date of issuance; or

(ii) If comments were received, thirty days after receipt of the final determination; or

(iii) A later date as specified within the PSD permit approval.

(3) **PSD technical support document.** Ecology shall develop a technical support document for each preliminary PSD determination. The preliminary technical support document will be updated prior to issuance of the final determina-

tion to reflect changes to the final determination based on comments received. The technical support document shall include the following information:

(a) A brief description of the major stationary source, major modification, or activity subject to review;

(b) The physical location, ownership, products and processes involved in the major stationary source or major modification subject to review;

(c) The type and quantity of pollutants proposed to be emitted into the air;

(d) A brief summary of the BACT options considered and the reasons why the selected BACT level of control was selected;

(e) A brief summary of the basis for the permit approval conditions;

(f) A statement on whether the emissions will or will not cause a state and national ambient air quality standard to be exceeded;

(g) The degree of increment consumption expected to result from the source or modification;

(h) An analysis of the impacts on air quality related values in federal Class I areas and other Class I areas affected by the project; and

(i) An analysis of the impacts of the proposed emissions on visibility in any federal Class I area following the requirements in WAC 173-400-117.

(4) Appeals. A PSD permit, any conditions contained in a PSD permit, or the denial of PSD permit may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW. A PSD permit issued under the terms of a delegation agreement can be appealed to the EPA's environmental appeals board as provided in 40 CFR 124.13 and 40 CFR 124.19.

(5) Construction time limitations.

(a) Approval to construct or modify a major stationary source becomes invalid if construction is not commenced within eighteen months of the effective date of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The time period between construction of the approved phases of a phased construction project cannot be extended. Each phase must commence construction within eighteen months of the projected and approved commencement date.

(b) Ecology may extend the eighteen-month effective period of a PSD permit upon a satisfactory showing that an extension is justified. A request to extend the effective time to begin or complete actual construction under a PSD permit may be submitted. The request may result from the cessation of on-site construction before completion or failure to begin actual construction of the project(s) covered by the PSD permit.

(i) Request requirements.

(A) A written request for the extension, submitted by the PSD permit holder, as soon as possible prior to the expiration of the current PSD permit.

(B) An evaluation of BACT and an updated ambient impact, including an increment analysis, for all pollutants subject to the approval conditions in the PSD permit.

(ii) Duration of extensions.

(A) No single extension of time shall be longer than eighteen months.

(B) The cumulative time prior to beginning actual construction under the original PSD permit and all approved time extensions shall not exceed fifty-four months.

(iii) Issuance of an extension.

(A) Ecology may approve and issue an extension of the current PSD permit.

(B) The extension of approval shall reflect any revised BACT limitations based on the evaluation of BACT presented in the request for extension and other information available to ecology.

(C) The issuance of an extension is subject to the public involvement requirements in WAC 173-400-740.

(iv) For the extension of a PSD permit, ecology must prepare a technical support document consistent with WAC 173-400-730(3) only to the extent that those criteria apply to a request to extend the construction time limitation.

AMENDATORY SECTION (Amending Order 03-07, filed 1/10/05, effective 2/10/05)

WAC 173-400-740 PSD permitting public involvement requirements. (1) **Actions requiring notification of the public.** Ecology must provide public notice before approving or denying any of the following types of actions related to implementation of the PSD program contained in WAC 173-400-720:

(a) Any preliminary determination to approve or disapprove a PSD permit application; or

(b) An extension of the time to begin construction or suspend construction under a PSD permit; or

(c) A revision to a PSD permit, except an administrative amendment to an existing permit; or

(d) Use of a modified or substituted model in Appendix W of 40 CFR Part 51 (as in effect on May 1, 2012) as part of review of air quality impacts.

(2) Notification of the public. ((Within one year of)) As expeditiously as possible after the receipt of a complete PSD application, and as expeditiously as possible after receipt of a request for extension of the construction time limit under WAC 173-400-730(6) or ((for)) after receipt of a nonadministrative revision to a PSD permit under WAC 173-400-750, ecology shall:

(a) Make available for public inspection in at least one location in the vicinity where the proposed source would be constructed, or for revisions to a PSD permit where the permittee exists, a copy of the information submitted by the applicant, and any applicable preliminary determinations, including analyses of the effects on air quality and air quality related values, considered in making the preliminary determination. Exemptions from this requirement include information protected from disclosure under any applicable law, including, but not limited to, RCW 70.94.205 and chapter 173-03 WAC.

(b) Notify the public by:

(i) Causing to be published, in a newspaper of general circulation in the area of the proposed project, the public notice prepared in accordance with WAC 173-400-730(4).

The date the public notice is published in the newspaper starts the required thirty-day comment period.

(ii) If ecology grants a request to extend the public comment period, the extension notice must also be published in a newspaper as noted above and a copy of the extension notice sent to the organizations and individuals listed in (c) and (d) of this subsection. The closing date of the extended comment period shall be as defined in the public comment period extension notification.

(iii) If a hearing is held, the public comment period must extend through the hearing date.

(iv) The applicant or other initiator of the action must pay the cost of providing public notice.

(c) Send a copy of the public notice to:

(i) Any Indian governing body whose lands may be affected by emissions from the project;

(ii) The chief executive of the city where the project is located;

(iii) The chief executive of the county where the project is located;

(iv) Individuals or organizations that requested notification of the specific project proposal;

(v) Other individuals who requested notification of PSD permits;

(vi) Any state within 100 km of the proposed project.

(d) Send a copy of the public notice, PSD preliminary determination, and the technical support document to:

(i) The applicant;

(ii) The affected federal land manager;

(iii) EPA Region 10;

(iv) The permitting authority with authority over the source under chapter 173-401 WAC;

(v) Individuals or organizations who request a copy; and

(vi) The location for public inspection of material required under (a) of this subsection.

(3) **Public notice content.** The public notice shall contain at least the following information:

(a) The name and address of the applicant;

(b) The location of the proposed project;

(c) A brief description of the project proposal;

(d) The preliminary determination to approve or disapprove the application;

(e) How much increment is expected to be consumed by this project;

(f) The name, address, and telephone number of the person to contact for further information;

(g) A brief explanation of how to comment on the project;

(h) An explanation on how to request a public hearing;

(i) The location of the documents made available for public inspection;

(j) There is a thirty-day period from the date of publication of the notice for submitting written comment to ecology;

(k) A statement that a public hearing may be held if ecology determines within a thirty-day period that significant public interest exists;

(l) The length of the public comment period in the event of a public hearing;

(m) For projects subject to special protection requirements for federal Class I areas, in WAC 173-400-117, and

where ecology disagrees with the analysis done by the federal land manager, ecology shall explain its decision in the public notice or state that an explanation of the decision appears in the technical support document for the proposed approval or denial.

(4) **Public hearings.**

(a) The applicant, any interested governmental entity, any group, or any person may request a public hearing within the thirty-day public comment period. A request must indicate the interest of the entity filing it and why a hearing is warranted. Whether a request for a hearing is filed or not, ecology may hold a public hearing if it determines significant public interest exists. Ecology will determine the location, date, and time of the public hearing.

(b) Notification of a public hearing will be accomplished per the requirements of WAC 173-400-740(2).

(c) The public must be notified at least thirty days prior to the date of the hearing (or first of a series of hearings).

(5) **Consideration of public comments.** Ecology shall make no final decision on any application or action of any type described in subsection (1) of this section until the public comment period has ended and any comments received during the public comment period have been considered. Ecology shall make all public comments available for public inspection at the same locations where the preconstruction information on the proposed major source or major modification was made available.

(6) **Issuance of a final determination.**

(a) The final approval or disapproval determination (~~((shall))~~ must be made within one year of receipt of a complete application and must include the following:

(i) A copy of the final PSD permit or the determination to deny the permit;

(ii) A summary of the comments received;

(iii) Ecology's response to those comments;

(iv) A description of what approval conditions changed from the preliminary determination; and

(v) A cover letter that includes an explanation of how the final determination may be appealed.

(b) Ecology shall mail a copy of the cover letter that accompanies the final determination to:

(i) Individuals or organizations that requested notification of the specific project proposal;

(ii) Other individuals who requested notification of PSD permits;

(c) A copy of the final determination shall be sent to:

(i) The applicant;

(ii) U.S. Department of the Interior - National Park Service;

(iii) U.S. Department of Agriculture - Forest Service;

(iv) EPA Region 10;

(v) The permitting authority with authority over the source under chapter 173-401 WAC;

(vi) Any person who commented on the preliminary determination; and

(vii) The location for public inspection of material required under subsection (2)(a) of this section.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-750 Revisions to PSD permits. (1) The owner or operator may request, at any time, a change in conditions of a PSD permit and ecology may approve the request provided ecology finds that:

(a) The change in conditions will not cause the source to exceed an emissions standard established by regulation;

(b) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

(c) The change will not adversely impact the ability of ecology or the authority to determine compliance with an emissions standard;

(d) The revised PSD permit will continue to require BACT for each new or modified emission unit approved by the original PSD permit; and

(e) The revised PSD permit continues to meet the requirements of WAC ((173-400-112)) 173-400-800 through 173-400-860, and 173-400-113 ((3) and (4)), as applicable.

(2) A request to revise a PSD permit must be acted upon using the timelines found in WAC 173-400-730. The fee schedule found in chapter 173-455 WAC also applies.

(3) All revisions to PSD permits are subject to public involvement except for the following administrative revisions:

(a) Change of the owner or operator's business name and/or mailing address;

(b) Corrections to typographical errors;

(c) Revisions to compliance monitoring methods that provide for more frequent monitoring, replace a periodic monitoring requirement with a continuous monitoring, result in replacement of a manual emission testing method with an instrumental method, or other similar changes that based on ecology's technical evaluation of the proposal, do not reduce the ((permittee's)) ability of the permittee, the permitting authority, EPA, or ((ecology's ability)) ecology to determine compliance with the emission limitations; ((or))

(d) Revisions to reporting requirements contained in a PSD permit to coordinate reporting with reporting requirements contained in the air operating permit issued to the source or that result in more frequent reporting by the permittee; or

(e) Any other revision, similar to those listed above, that based on ecology's technical evaluation of the proposal, does not reduce the stringency of the emission limitations in the PSD permit or the ability of ecology, the permitting authority, EPA, or the public to determine compliance with the approval conditions in the PSD permit.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-810 Major stationary source and major modification definitions. ((The definitions in WAC 173-400-030 are to be used in WAC 173-400-800 through 173-400-860 unless a term is defined differently in this section.)) The definitions in this section must be used in the major stationary source nonattainment area permitting requirements in WAC 173-400-800 through 173-400-860. If a term is defined differently in the federal program require-

ments for issuance, renewal and expiration of a Plant Wide Applicability Limit which are adopted by reference in WAC 173-400-850, then that definition is to be used for purposes of the Plant Wide Applicability Limit program.

(1) Actual emissions means:

(a) The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with (b) through (d) of this subsection. This definition does not apply when calculating whether a significant emissions increase has occurred, or for establishing a PAL under WAC 173-400-850. Instead, "projected actual emissions" and "baseline actual emissions" as defined in subsections (2) and (23) of this section apply for those purposes.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive twenty-four-month period which precedes the particular date and which is representative of normal source operation. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The permitting authority may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(2) Baseline actual emissions means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with (a) through (d) of this subsection.

(a) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The permitting authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being

changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by (a)(ii) of this subsection.

(b) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive twenty-four-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the permitting authority for a permit required either under WAC 173-400-800 through 173-400-860 or under a plan approved by the administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(i) The average rate shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, the average rate shall include fugitive emissions (to the extent quantifiable).

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive twenty-four-month period.

(iii) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive twenty-four-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan as part of the demonstration of attainment or as reasonable further progress to attain the NAAQS.

(iv) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive twenty-four-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive twenty-four-month period can be used for each regulated NSR pollutant.

(v) The average rate shall not be based on any consecutive twenty-four-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required under (b)(ii) and (iii) of this subsection.

(c) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such

unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit. In the latter case, fugitive emissions, to the extent quantifiable, shall be included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.

(d) For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in (a) of this subsection, for other existing emissions units in accordance with the procedures contained in (b) of this subsection, and for a new emissions unit in accordance with the procedures contained in (c) of this subsection, except that fugitive emissions (to the extent quantifiable) shall be included regardless of the source category.

(3) Building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

(4) Clean coal technology means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

(5) Clean coal technology demonstration project means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of two and one-half billion dollars for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least twenty percent of the total cost of the demonstration project.

(6) Construction means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

(7) Continuous emissions monitoring system (CEMS) means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

(8) Continuous parameter monitoring system (CPMS) means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂

concentrations), and to record average operational parameter value(s) on a continuous basis.

(9) Continuous emissions rate monitoring system (CERMS) means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

(10) Electric utility steam generating unit means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

(11) Emissions unit means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this section, there are two types of emissions units:

(a) A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that is not a new emissions unit. A replacement unit, as defined in subsection (25) of this section is an existing emissions unit.

(12) Fugitive emissions means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening. Fugitive emissions, to the extent quantifiable, are addressed as follows for the purposes of this section:

(a) In determining whether a stationary source or modification is major, fugitive emissions from an emissions unit are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or the emissions unit is located at a stationary source that belongs to one of those source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source and that are not, by themselves, part of a listed source category.

(b) For purposes of determining the net emissions increase associated with a project, an increase or decrease in fugitive emissions is creditable only if it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(c) For purposes of determining the projected actual emissions of an emissions unit after a project, fugitive emissions are included only if the emissions unit is part of one of

the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) For purposes of determining the baseline actual emissions of an emissions unit, fugitive emissions are included only if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or if the emission unit is located at a major stationary source that belongs to one of the listed source categories, except that, for a PAL, fugitive emissions shall be included regardless of the source category. With the exception of PALs, fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(e) In calculating whether a project will cause a significant emissions increase, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(f) For purposes of monitoring and reporting emissions from a project after normal operations have been resumed, fugitive emissions are included only for those emissions units that are part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for any emissions units that are located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(g) For all other purposes of this section, fugitive emissions are treated in the same manner as other, nonfugitive emissions. This includes, but is not limited to, the treatment of fugitive emissions for offsets (see WAC 173-400-840(7)) and for PALs (see WAC 173-400-850).

(13) Lowest achievable emission rate (LAER) means, for any source, the more stringent rate of emissions based on the following:

(a) The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator

of the proposed stationary source demonstrates that such limitations are not achievable; or

(b) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

(14)(a) Major stationary source means any stationary source of air pollutants that emits, or has the potential to emit, one hundred tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds apply in areas subject to sections 181-185B, sections 186 and 187, or sections 188-190 of the Federal Clean Air Act. In those areas the following thresholds apply:

(i) Fifty tons per year of volatile organic compounds in any serious ozone nonattainment area;

(ii) Fifty tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area;

(iii) Twenty-five tons per year of volatile organic compounds in any severe ozone nonattainment area;

(iv) Ten tons per year of volatile organic compounds in any extreme ozone nonattainment area;

(v) Fifty tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the administrator);

(vi) Seventy tons per year of PM-10 in any serious nonattainment area for PM-10.

(b) For the purposes of applying the requirements of WAC 173-400-830 to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, one hundred tons per year or more of nitrogen oxides emissions, except that the emission thresholds in (b)(i) through (vi) of this subsection shall apply in areas subject to sections 181-185B of the Federal Clean Air Act.

(i) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(ii) One hundred tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(iii) One hundred tons per year or more of nitrogen oxides in any area designated under section 107(d) of the Federal Clean Air Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(iv) Fifty tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(v) Twenty-five tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(vi) Ten tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone.

(c) Any physical change that would occur at a stationary source not qualifying under (a) and (b) of this subsection as a major stationary source, if the change would constitute a major stationary source by itself.

(d) A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

(e) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of subsection (14) of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than fifty tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants - The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140;

(xxi) Fossil-fuel boilers (or combination thereof) totaling more than two hundred fifty million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding three hundred thousand barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil fuel-fired steam electric plants of more than two hundred fifty million British thermal units per hour heat input; and

(xxvii) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the act.

(15)(a) Major modification means any physical change in or change in the method of operation of a major stationary source that would result in:

(i) A significant emissions increase of a regulated NSR pollutant; and

(ii) A significant net emissions increase of that pollutant from the major stationary source.

(b) Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

(c) A physical change or change in the method of operation shall not include:

(i) Routine maintenance, repair and replacement;

(ii) Use of an alternative fuel or raw material by reason of an order under sections 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(iii) Use of an alternative fuel by reason of an order or rule section 125 of the Federal Clean Air Act;

(iv) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(v) Use of an alternative fuel or raw material by a stationary source which:

(A) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I or section 51.166; or

(B) The source is approved to use under any permit issued under regulations approved by the administrator implementing 40 CFR 51.165.

(vi) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I or 40 CFR 51.166;

(vii) Any change in ownership at a stationary source;

(viii) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(A) The state implementation plan for the state in which the project is located; and

(B) Other requirements necessary to attain and maintain the National Ambient Air Quality Standard during the project and after it is terminated.

(d) This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements for a PAL for that pollutant. Instead, the definitions in 40 CFR Part 51, Appendix S adopted by reference in WAC 173-400-850 shall apply.

(e) For the purpose of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to sections 181-185B, Part D, Title I of the Federal Clean Air Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

(f) Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is sub-

ject to sections 181-185B, Part D, Title I of the Federal Clean Air Act.

(g) Fugitive emissions shall not be included in determining for any of the purposes of this section whether a physical change in or change in the method of operation of a major stationary source is a major modification, unless the source belongs to one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source.

(16) Necessary preconstruction approvals or permits means those permits or orders of approval required under federal air quality control laws and regulations or under air quality control laws and regulations which are part of the applicable state implementation plan.

(17)(a) Net emissions increase means with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(i) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to WAC 173-400-820 (2) and (3); and

(ii) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. In determining the net emissions increase, baseline actual emissions for calculating increases and decreases shall be determined as provided in the definition of baseline actual emissions, except that subsection (2)(a)(iii) and (b)(iv) of this section, in the definition of baseline actual emissions, shall not apply.

(b) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs;

(c) An increase or decrease in actual emissions is creditable only if:

(i) It occurred no more than one year prior to the date of submittal of a complete notice of construction application for the particular change, or it has been documented by an emission reduction credit (ERC). Any emissions increases occurring between the date of issuance of the ERC and the date when a particular change becomes operational shall be counted against the ERC; and

(ii) The permitting authority has not relied on it in issuing a permit for the source under regulations approved pursuant to 40 CFR 51.165, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(iii) As it pertains to an increase or decrease in fugitive emissions (to the extent quantifiable), it occurs at an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or it occurs at an emissions unit that is located at a major stationary source that belongs to one of the listed source categories. Fugitive emission increases or decreases are not creditable for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in subsection (14)(e) of this section,

the definition of major stationary source, and that are not, by themselves, part of a listed source category.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level;

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(iii) The permitting authority has not relied on it as part of an offsetting transaction under WAC 173-400-113(4) or 173-400-830 or in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I or the state has not relied on it in demonstrating attainment or reasonable further progress;

(iv) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant.

(g) Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed one hundred eighty days.

(h) Subsection (1)(b) of this section, in the definition of actual emissions, shall not apply for determining creditable increases and decreases or after a change.

(18) Nonattainment major new source review (NSR) program means the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.165, or a program that implements 40 CFR Part 51 Appendix S, sections I through VI. Any permit issued under either program is a major NSR permit.

(19) Pollution prevention means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal; it does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

(20) Predictive emissions monitoring system (PEMS) means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O₂ or CO₂ concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

(21) Prevention of significant deterioration (PSD) permit means any permit that is issued under the major source preconstruction permit program that has been approved by the administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

(22) Project means a physical change in, or change in the method of operation of, an existing major stationary source.

(23)(a) Projected actual emissions means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (twelve-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source.

(b) In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

(i) Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(ii) Shall include emissions associated with startups, shutdowns, and malfunctions; and, for an emissions unit that is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source, or for an emissions unit that is located at a major stationary source that belongs to one of the listed source categories, shall include fugitive emissions (to the extent quantifiable); and

(iii) Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive twenty-four-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or

(iv) In lieu of using the method set out in (b)(i) through (iii) of this subsection, the owner or operator may elect to use the emissions unit's potential to emit, in tons per year. For this purpose, if the emissions unit is part of one of the source categories listed in subsection (14)(e) of this section, the definition of major stationary source or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories, the unit's potential to emit shall include fugitive emissions (to the extent quantifiable).

(24)(a) Regulated NSR pollutant, means the following:

(i) Nitrogen oxides or any volatile organic compounds;

(ii) Any pollutant for which a National Ambient Air Quality Standard has been promulgated;

(iii) Any pollutant that is identified under this subsection as a constituent or precursor of a general pollutant listed in (a)(i) or (ii) of this subsection, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. For purposes of NSR precursor pollutants are the following:

(A) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(B) Sulfur dioxide is a precursor to PM-2.5 in all PM-2.5 nonattainment areas.

(C) Nitrogen oxides are precursors to PM-2.5 in all PM-2.5 nonattainment areas.

(b) PM-2.5 emissions and PM-10 emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011 (or any earlier date established in the upcoming EPA (~~rulemaking~~) rule making codifying emission test methods for condensable particulate matter), such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM-2.5 in nonattainment major NSR permits. Compliance with emissions limitations for PM-2.5 issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations for PM-2.5 made prior to the effective date of WAC 173-400-800 through 173-400-850 made without accounting for condensable particulate matter shall not be considered in violation of WAC 173-400-800 through 173-400-850.

(25)(a) Replacement unit means an emissions unit for which all the criteria listed below are met:

(i) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15 (b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(ii) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(iii) The replacement does not alter the basic design parameters of the process unit. Basic design parameters are:

(A) Except as provided in (a)(iii)(C) of this subsection, for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on British thermal units content must be used for determining the basic design parameter(s) for a coal-fired electric utility steam generating unit.

(B) Except as provided in (a)(iii)(C) of this subsection, the basic design parameter(s) for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material of the process unit when selecting a basic design parameter.

(C) If the owner or operator believes the basic design parameter(s) in (a)(iii)(A) and (B) of this subsection is not appropriate for a specific industry or type of process unit, the owner or operator may propose to the reviewing authority an alternative basic design parameter(s) for the source's process unit(s). If the reviewing authority approves of the use of an alternative basic design parameter(s), the reviewing authority will issue a new permit or modify an existing permit that is legally enforceable that records such basic design parameter(s).

and requires the owner or operator to comply with such parameter(s).

(D) The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameter(s) specified in (a)(iii)(A) and (B) of this subsection.

(E) If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameter(s) using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.

(F) Efficiency of a process unit is not a basic design parameter.

(iv) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

(b) No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(26) Reviewing authority means "permitting authority" as defined in WAC 173-400-030.

(27) Significant means:

(a) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tons per year
Sulfur dioxide	40 tons per year
Ozone	40 tons per year of volatile organic compounds or nitrogen oxides
Lead	0.6 tons per year
PM-10	15 tons per year
PM-2.5	10 tons per year of direct PM-2.5 emissions; 40 tons per year of nitrogen oxide emissions; 40 tons per year of sulfur dioxide emissions

(b) Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source located in a serious or severe ozone nonattainment area that is subject to sections 181-185B, of the Federal Clean Air Act, if such emissions increase of volatile organic compounds exceeds twenty-five tons per year.

(c) For the purposes of applying the requirements of WAC 173-400-830 (1)(i) to modifications at major stationary

sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in (a), (b), and (e) of this subsection, of the definition of significant, shall apply to nitrogen oxides emissions.

(d) Notwithstanding the significant emissions rate for carbon monoxide under (a) of this subsection, the definition of significant, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds fifty tons per year, provided the administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

(e) Notwithstanding the significant emissions rates for ozone under (a) and (b) of this subsection, the definition of significant, any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to sections 181-185B of the Federal Clean Air Act shall be considered a significant net emissions increase.

(28) Significant emissions increase means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

(29) Source ((means "stationary souree" as defined in WAC 173-400-030)) and stationary source means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

(30) Temporary clean coal technology demonstration project means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the state implementation plan for the state in which the project is located and other requirements necessary to attain and maintain the National Ambient Air Quality Standards during the project and after it is terminated.

(31) Best available control technology (BACT) means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines if it is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Part 60 or 61. If the reviewing authority determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the

degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-820 Determining if a new stationary source or modification to a stationary source is subject to these requirements. (1) Any new major stationary source ((or major modification)) located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, that is major for the pollutant for which the area is designated nonattainment ((under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, if the stationary source or modification would locate anywhere in the designated nonattainment under section 107 (d)(1)(A)(i) of the Federal Clean Air Act area shall use the following procedures to determine if the new stationary source or modification)) is subject to the permitting requirements of WAC 173-400-830 through 173-400-850. Any major modification of an existing major stationary source that is major for the pollutant for which the area is designated nonattainment and is located anywhere in a nonattainment area designated under section 107 (d)(1)(A)(i) of the Federal Clean Air Act, and that has a significant net emissions increase of the pollutant for which the area is designated nonattainment is subject to the permitting requirements of WAC 173-400-830 through 173-400-850. A modification to an existing major stationary source must use the following procedures to determine if the modification would result in a significant net emissions increase of the nonattainment pollutant.

(2) Except as otherwise provided in subsection (4) of this section, and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases - A significant emissions increase, and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(3) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to (a) through (c) of this subsection. For these calculations, fugitive emissions (to the extent quantifiable) are included only if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories. Fugitive emissions are not included for those emissions units located at a facility whose primary activity is not represented by one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) and that are not, by themselves, part of a listed source category. The procedure for calculating (before beginning actual construction) whether a significant

net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition of net emission increase. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(a) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(b) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(c) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in (a) and (b) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

(4) Any major stationary source which has a PAL for a regulated NSR pollutant shall comply with requirements in WAC 173-400-850.

(5) ((**Reasonable possibility:**)) The following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where ((*there is a reasonable possibility that*)) a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(i) through (iii) for calculating projected actual emissions.

(a) Before beginning actual construction of the project, the owner or operator shall document, and maintain a record of the following information:

(i) A description of the project;

(ii) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(iii) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under the definition of projected actual emissions contained in WAC 173-400-810 (23)(b)(iii) and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(b) Before beginning actual construction, the owner or operator shall provide a copy of the information set out in (a) of this subsection to the permitting authority. This informa-

tion may be submitted in conjunction with any NOC application required under the provisions of WAC 173-400-110. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the permitting authority before beginning actual construction.

(c) The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in (a)(ii) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. ((For purposes of this subsection (e), fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of one of the source categories listed in the definition of major stationary source contained in WAC 173-400-810 (14)(e) or if the emissions unit is located at a major stationary source that belongs to one of the listed source categories.))

(d) The owner or operator shall submit a report to the permitting authority within sixty days after the end of each year during which records must be generated under (c) of this subsection setting out the unit's annual emissions, as monitored pursuant to (c) of this subsection, during the year that preceded submission of the report.

(e) The owner or operator shall submit a report to the permitting authority if the annual emissions, in tons per year, from the project identified in (a) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to (a)(iii) of this subsection), by a significant amount (as defined in the definition of significant) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to (a)(iii) of this subsection. Such report shall be submitted to the permitting authority within sixty days after the end of such year. The report shall contain the following:

(i) The name, address and telephone number of the major stationary source;

(ii) The annual emissions as calculated pursuant to (d) of this subsection; and

(iii) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

(6) For projects not required to submit the above information to the permitting authority as part of a notice of construction application, the owner or operator of the source shall make the information required to be documented and maintained pursuant to subsection (5) of this section available for review upon a request for inspection by the permitting authority or the general public pursuant to the requirements contained in chapter 173-401 WAC.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-830 Permitting requirements. (1) The owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source, as determined according to WAC 173-400-820, is authorized to construct and operate the proposed project provided the following requirements are met:

(a) The proposed new major stationary source or a major modification of an existing major stationary source will not cause any ambient air quality standard to be exceeded, will not violate the requirements for reasonable further progress established by the SIP and will comply with WAC 173-400-113 (3) and (4) for all air contaminants for which the area has not been designated nonattainment.

(b) The ((proposed new major stationary source or a major modification of an existing major stationary source and the)) permitting authority has determined, based on review of an analysis performed by the owner or operator of a proposed new major stationary source or a major modification of an existing major stationary source of alternative sites, sizes, production processes, and environmental control techniques, that the benefits of the project significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(c) The proposed new major stationary source or a major modification of an existing major stationary source will comply with all applicable new source performance standards, National Emission Standards for Hazardous Air Pollutants, National Emission Standards for Hazardous Air Pollutants for source categories, and emission standards adopted by ecology and the permitting authority.

(d) The proposed new major stationary source or a major modification of an existing major stationary source will employ BACT for all air contaminants and designated precursors to those air contaminants, except that it will achieve LAER for the air contaminants and designated precursors to those air contaminants for which the area has been designated nonattainment and for which the proposed new major stationary source ((or major modification to an existing major stationary source is major)) is major or for which the existing source is major and the proposed modification is significant.

(e) Allowable emissions from the proposed new major stationary source or major modification of an existing major stationary source of that air contaminant and designated precursors to those air contaminants are offset by reductions in actual emissions from existing sources in the nonattainment area. All offsetting emission reductions must satisfy the requirements in WAC 173-400-840.

(f) The owner or operator of the proposed new major stationary source or major modification of an existing major stationary source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in Washington are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Federal Clean Air Act, including all rules in the SIP.

(g) If the proposed new source is also a major stationary source within the meaning of WAC 173-400-720, or the pro-

posed modification is also a major modification within the meaning of WAC 173-400-720, it meets the requirements of the PSD program under 40 CFR 52.21 delegated to ecology by EPA Region 10, while such delegated program remains in effect. The proposed new major stationary source or major modification will comply with the PSD program in WAC ((173-400-720)) 173-400-700 through 173-400-750 for all air contaminants for which the area has not been designated nonattainment when that PSD program has been approved into the Washington SIP.

(h) The proposed new major stationary source or the proposed major modification meets the special protection requirements for federal Class I areas in WAC 173-400-117.

(i) All requirements of this section applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in an ozone nonattainment area or in portions of an ozone transport region where the administrator of the environmental protection agency has granted a NO_x waiver applying the standards set forth under section 182(f) of the Federal Clean Air Act and the waiver continues to apply.

(j) The requirements of this section applicable to major stationary sources and major modifications of PM-10 and PM-2.5 shall also apply to major stationary sources and major modifications of PM-10 and PM-2.5 precursors, except where the administrator of the EPA determines that such sources do not contribute significantly to PM-10 levels that exceed the PM-10 ambient standards in the area.

(2) Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirements under local, state or federal law.

(3) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of regulations approved pursuant to 40 CFR 51.165, including 40 CFR Part 51, Appendix S, shall apply to the source or modification as though construction had not yet commenced on the source or modification.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-840 Emission offset requirements. (1) The ratio of total actual emissions reductions to the emissions increase shall be 1:1:1 unless an alternative ratio is provided for the applicable nonattainment area in subsection (2) through (4) of this section.

(2) In meeting the emissions offset requirements of WAC 173-400-830 for ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(a) In any marginal nonattainment area for ozone - 1:1:1;

- (b) In any moderate nonattainment area for ozone - 1.15:1;
- (c) In any serious nonattainment area for ozone - 1.2:1;
- (d) In any severe nonattainment area for ozone - 1.3:1; and
- (e) In any extreme nonattainment area for ozone - 1.5:1.

(3) Notwithstanding the requirements of subsection (2) of this section for meeting the requirements of WAC 173-400-830, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.15:1 for all areas within an ozone transport region that is subject to sections 181-185B of the Federal Clean Air Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to sections 181-185B of the Federal Clean Air Act.

(4) In meeting the emissions offset requirements of this section for ozone nonattainment areas that are subject to sections 171-179b of the Federal Clean Air Act (but are not subject to sections 181-185B of the Federal Clean Air Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be 1.1:1.

(5) Emission offsets used to meet the requirements of WAC 173-400-830 (1)(e), must be for the same regulated NSR pollutant.

(6) If the offsets are provided by another source, the reductions in emissions from that source must be federally enforceable by the time the order of approval for the new or modified source is effective. An emission reduction credit issued under WAC 173-400-131 may be used to satisfy some or all of the offset requirements of this subsection.

(7) Emission offsets are required for allowable emissions occurring during stationary source startup and shutdown.

(8) Emission offsets ((not included)) including those described in an emission reduction credit issued under WAC 173-400-131, must meet the following criteria:

(a) The baseline for determining credit for emissions reductions is the emissions limit under the applicable state implementation plan in effect at the time the notice of construction application is determined to be complete, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where:

(i) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within the designated nonattainment area; or

(ii) The applicable state implementation plan does not contain an emissions limitation for that source or source category.

(b) Other limitations on emission offsets.

(i) Where the emissions limit under the applicable state implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below the potential to emit;

(ii) For an existing fuel combustion source, credit shall be based on the allowable emissions under the applicable state implementation plan for the type of fuel being burned at the time the notice of construction application is determined to be complete. If the existing source commits to switch to a cleaner fuel at some future date, an emissions offset credit based on the allowable (or actual) emissions reduction result-

ing from the fuels change is not acceptable, unless the permit or other enforceable order is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to the higher emitting (dirtier) fuel at some later date. The permitting authority must ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches;

(iii) Emission reductions.

(A) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if:

(I) Such reductions are surplus, permanent, quantifiable, and federally enforceable; and

(II) The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the permitting authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the preshutdown or precurtailment emissions from the previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

(B) Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (8)(b)(iii)(A) of this section may be generally credited only if:

(I) The shutdown or curtailment occurred on or after the date the construction permit application is filed; or

(II) The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of (7)(b)(iii)(A)(I) of this section.

(iv) All emission reductions claimed as offset credit shall be federally enforceable;

(v) Emission reductions used for offsets may only be from any location within the designated nonattainment area. Except the permitting authority may allow use of emission reductions from another area that is nonattainment for the same pollutant, provided the following conditions are met:

(A) The other area is designated as an equal or higher nonattainment status than the nonattainment area where the source proposing to use the reduction is located; and

(B) Emissions from the other nonattainment area contribute to violations of the standard in the nonattainment area where the source proposing to use the reduction is located.

(vi) Credit for an emissions reduction can be claimed to the extent that the reduction has not been relied on in issuing any permit under 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51 Subpart I or the state has not relied on it in demonstration of attainment or reasonable further progress.

(vii) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Federal Clean Air Act shall be determined by summing the difference between the

allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

((8))) (9) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977). This document is also available from Mr. Ted Creekmore, Office of Air Quality Planning and Standards, (MD-15) Research Triangle Park, NC 27711.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-850 Actual emissions plantwide applicability limitation (PAL). The Actuals Plantwide Applicability limit program contained in Section IV.K of 40 CFR Part 51, Appendix S, Emission Offset Ruling, as of ((July 1, 2010)) May 1, 2012, is adopted by reference with the following exceptions:

(1) The term "reviewing authority" means "permitting authority" as defined in WAC 173-400-030.

(2) "PAL permit" means the major or minor new source review permit issued that establishes the PAL and those PAL terms as they are incorporated into an air operating permit issued pursuant to chapter 173-401 WAC.

(3) The reference to 40 CFR 70.6 (a)(3)(iii)(B) in subsection IV.K.14 means WAC 173-401-615 (3)(b).

(4) No PAL permit can be issued under this provision until EPA adopts this section into the state implementation plan.

AMENDATORY SECTION (Amending Order 09-01, filed 3/1/11, effective 4/1/11)

WAC 173-400-930 Emergency engines. (1) **Applicability.**

(a) This section applies statewide except where a permitting authority has taken specific action determining not to adopt this section.

(b) This section applies to diesel-fueled compression ignition emergency engines with a cumulative BHP rating greater than 500 BHP and equal to or less than 2000 BHP.

((b))) (c) This section is not applicable to emergency engines that are part of a major stationary source, as defined in WAC 173-400-710 and 173-400-810, or major modification, as defined in WAC 173-400-710 and 173-400-810.

(d) In lieu of filing a notice of construction application under WAC 173-400-110, the owner or operator may comply with the requirements of this section for emergency engines.

((e))) (e) Compliance with this section satisfies the requirement for new source review of emergency engines under RCW 70.94.152 and chapter 173-460 WAC.

((f))) (f) An applicant may choose to submit a notice of construction application in accordance with WAC 173-400-110 for a site specific review of criteria and toxic air pollutants in lieu of using this section's provisions.

((e))) (g) If an applicant cannot meet the requirements of this section, then they must file a notice of construction application.

(2) **Operating requirements for emergency engines.** Emergency engines using this section must:

(a) Meet EPA emission standards applicable to all new nonroad compression-ignition engines, contained in 40 CFR Part 89.112 Table 1 and 40 CFR Part 1039.102 Tables 6 and 7, as applicable for the year that the emergency engine is put in operation.

(b) Be fueled by ultra low sulfur diesel or ultra low sulfur biodiesel, with a sulfur content of 15 ppm or 0.0015% sulfur by weight or less.

(c) Operate a maximum of fifty hours per year for maintenance and testing or other nonemergency use.

(3) Definitions.

(a) **Emergency engine** means a new diesel-fueled stationary compression ignition engine. The engine must meet all the criteria specified below. The engine must be:

(i) Installed for the primary purpose of providing electrical power or mechanical work during an emergency use and is not the source of primary power at the facility; and

(ii) Operated to provide electrical power or mechanical work during an emergency use.

(b) **Emergency use** means providing electrical power or mechanical work during any of the following events or conditions:

(i) The failure or loss of all or part of normal power service to the facility beyond the control of the facility; or

(ii) The failure or loss of all or part of a facility's internal power distribution system.

Examples of emergency operation include the pumping of water or sewage and the powering of lights.

(c) **Maintenance and testing** means operating an emergency engine to:

(i) Evaluate the ability of the engine or its supported equipment to perform during an emergency; or

(ii) Train personnel on emergency activities; or

(iii) Test an engine that has experienced a breakdown, or failure, or undergone a preventative overhaul during maintenance; or

(iv) Exercise the engine if such operation is recommended by the engine or generator manufacturer.

WSR 12-11-118

PROPOSED RULES

SECRETARY OF STATE

(Elections Division)

[Filed May 22, 2012, 4:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-058.

Title of Rule and Other Identifying Information: Elections, voter registration, and the initiative and referendum process.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on June 26, 2012, at 10:00 a.m.

Date of Intended Adoption: June 27, 2012.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, katie.blinn@sos.wa.gov, fax (360) 586-5629, by June 26, 2012.

Assistance for Persons with Disabilities: Contact Katie Blinn by June 26, 2012, (360) 902-4180.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules address the information required to be available on-line, precinct committee officer elections, minor party presidential nominations, ballot drop boxes, voting centers, processing mail-in ballots, certifying elections, voter registration, and initiatives and referenda.

Reasons Supporting Proposal: The proposed rules implement legislation that passed during the 2011 and 2012 legislative sessions, facilitates keeping voter registration information up-to-date, and clarifies the requirements for filing and processing initiatives and referenda.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.20.121, 29A.84.510, 29A.60.165, 29A.60.230, 29A.08.210, 29A.08.-420.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the secretary of state, elections division, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

May 22, 2012

Steve Excell

Assistant Secretary of State

NEW SECTION

WAC 434-208-160 On-line information. The secretary of state and each county auditor must provide information on-line that includes, at a minimum, how to:

- (1) Register to vote using a paper or on-line application;
- (2) Confirm a registration status;
- (3) Request a ballot or replacement ballot;
- (4) For service and overseas voters, receive a ballot electronically;
- (5) Update a residential address or mailing address;
- (6) Contact the elections office by phone, fax, e-mail, mailing address, and physical address;
- (7) Obtain information about the next election;
- (8) For service or overseas voters, return a signed declaration and voted ballot electronically;
- (9) Confirm that a voted ballot has been received; and
- (10) Obtain election results.

NEW SECTION

WAC 434-215-021 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the

office of precinct committee officer shall be in substantially the following form:

Declaration of Candidacy

Precinct Committee Officer

instructions	File this form with your county elections department. Note: This document becomes public record once filed.		
office information	<p>member of the <input type="radio"/> Democratic Party <input type="radio"/> Republican Party</p> <p>precinct representing (name / number)</p>		
personal information <i>as registered to vote</i>	first name	middle	last
	date of birth (mm / dd / yyyy)		phone number
	residential address		city / ZIP
ballot information	exact name I would like printed on the ballot (<i>only contested races will appear on the ballot</i>)		
contact information	mailing address (<i>if different from residential address</i>)		city / ZIP
	email address		phone number
oath	<p>I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.</p> <p>Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.</p>		
	sign here	date here	
for office use only	<p>voter registration number date</p> <p><input type="checkbox"/> precinct verified office code</p> <p>staff</p>		

03/2012

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States. If two or more certificates of nomination are filed purporting to nominate the same candidates for president and vice-president by two different minor political parties, or both by a party and as an independent candidate, the first valid certificate of nomination filed with the secretary of state shall be accepted and subsequent certificates must be rejected.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-230-100 Political party precinct committee officer. ((The method for electing precinct committee officers on party ballots established in chapter 271, Laws of 2004 (the pick-a-party primary), was repealed by chapter 2, Laws of 2005. The method for electing precinct committee officers on a top two primary ballot under chapter 2, Laws of 2005 (the top two primary), was declared unconstitutional by the U.S. District Court for the Western District of Washington in Washington State Republican Party, et al. v. State of Washington, et al., Case No. C05-0927 JCC (January 11, 2011). "The central holding is that the political parties, not the government, are free to define the scope of their membership." Consequently, precinct committee officer elections are no longer conducted by state or county government. As private organizations, the political parties determine how to conduct their internal affairs, including selection of their officers.)) (1) The election of major political party precinct committee officers is established in RCW 29A.52— (section 3, chapter 89, Laws of 2012) and RCW 29A.80.051.

(2) The election of precinct committee officer is an intra-party election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW 29A.28.071.

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, the political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political party appearing second. Within each party, candidates shall be listed in the order determined by lot.

(4)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c)(i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem

Jane Doe Dem

(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate, regardless of party, for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-235-050

On-line information.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-100 Ballot deposit sites. (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of

the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open until 8:00 p.m. Staffed deposit sites may be open according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place and refer the ballot to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) Ballot boxes must be secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots.

(3) Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Whenever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-105 Voting centers. (1) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be marked with signage outside the building indicating the location as a place for voting;

(c) Issue ballots that include a declaration in the ballot materials;

(d) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) ~~((For voters voting on a direct recording electronic voting device, require the voter to provide photo identification, consistent with chapter 10, Laws of 2011, section 43(7), and to sign and date the declaration in WAC 434-230-015. The county auditor is not required to compare the signature on the declaration to the signature in the voter registration record if the voter provided identification. To prevent double voting, the voting center must have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095;))~~ Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. The voter must either:

(i) Provide photo identification, consistent with RCW 29A.40.160; or

(ii) Sign the ballot declaration required by WAC 434-230-015, and the signature on the declaration must be verified against the signature in the voter registration record before the voter may vote on a direct recording electronic voting device;

(g) Provide either a voters' pamphlet or sample ballots;

(h) Provide voter registration forms;

(i) Display a HAVA voter information poster;

(j) Display the date of that election;

(k) During a primary that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(j), and during a general election that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(k). The party preference notices may also be posted on-screen in direct recording electronic voting devices;

(l) Provide instructions on how to properly mark the ballot; and

(m) Provide election materials in alternative languages if required by the Voting Rights Act.

(2) Where it appears that a particular voter is having difficulty casting his/her vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(3) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

(a) Verification of the signature and postmark on the ballot declaration;

(b) Removal of the security envelope from the return envelope;

(c) Removal of the ballot from the security envelope;

(d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;

(e) Duplication of damaged and write-in ballots;

(f) Scanning and resolution of ballots on a digital scan voting system; and

(g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an ((electronic vote tallying)) optical scan voting system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ballots.

(5) Initial processing of voted ballots, which may include scanning and resolving ballots on a digital scan voting system, may begin as soon as voted ballots are received. All ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

(6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor has submitted an approved security plan to the secretary of state that prevents tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted ((only)) if:

(a) The ballot declaration is signed with a valid signature;

(b) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark; and

(c)(i) The envelope is postmarked not later than the day of the election and received not later than the day before certification of the election;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot of a service or overseas voter received by fax or e-mail is received no later than 8:00 p.m. on election day.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-261-050 Unsigned ballot declaration or mismatched signatures. (1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter registration record, the county auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the declaration ((~~provided by the auditor~~)), or mark the declaration in front of two witnesses, and return it to the county auditor no later than the day before certification of the primary or election.

(3) If the signature on the declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the ((new)) registration form becomes the signature ((on)) in the voter registration record for the current election and future elections; or

(b) Sign a ((copy of the declaration provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the copy of the declaration must match the signature on the identification, and both of those signatures must match the signature on the ballot declaration. The voter must return the signed declaration and identification)) signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The ((county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or

((c) Sign a copy of the declaration provided by the auditor in front of two witnesses who attest to the signature. The signature on the copy of the declaration must match the signature on the ballot declaration. The voter must return the signed declaration to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections)) signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting ((is)) are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on ((a)) the ballot declaration does not match the signature on the registration record because the voter ((used)) signed with a middle name, nickname, or initials ((or a common nickname)), the ballot may be counted as long as the ((surname)) last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ballot declaration if:

(a) The voter who signed the declaration can be identified;

(b) The signature on the declaration matches the signature on the voter registration record; and

(c) The voter who signed the declaration has not returned another ballot.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

(7) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(8) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

NEW SECTION

WAC 434-261-140 Precertification procedures. Prior to certifying the election, the county auditor shall exercise due diligence to confirm that all returned ballots have been received, processed, and reconciled, and that no ballots have been untabulated erroneously. Due diligence may include:

(1) Rechecking all ballot deposit sites; and

(2) Rechecking ballot storage containers in the ballot processing area, ballot tabulation area, canvassing board area, and vault.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-010 Definitions. As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing ballots, ruling on the validity of questioned or challenged ballots, verifying all unofficial returns as listed in the auditor's abstract of votes, and producing the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and ((chairman)) chair of the board of the county legislative authority, or their designated representatives.

((3) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by combination of precincts if applicable, legislative and congressional district subtotals, if any, and county wide totals. In a gubernatorial general election, the auditor's abstract of votes must also include the number of write in votes cast for governor. The auditor's abstract of votes must also include the reconciliation report required by RCW 29A.60.235. Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.)

((4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29A.60.200, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.))

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-070 Official county canvass report. (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon((The certification shall also state));

(b) Provides the total number of registered voters and votes cast in the county((The certification shall));

(c) Contains the oath required by RCW 29A.60.200, signed by ((the county auditor and attested to by the chairman of the board of the county legislative authority, and)) all members of the board or their designees; and

(d) Shall have a space where the official seal of the county shall be attached.

((This)) (2) The official county canvass report shall include:

(a) The certification(());

(b) The auditor's abstract of votes((, the written narrative of errors and discrepancies discovered and corrected, if applicable, and)) as described in WAC 434-262-030;

(c) The reconciliation report required by RCW 29A.60.235 ((shall constitute the official county canvass report)), which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and

(d) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The official county canvass report is the cumulative report referenced in RCW 29A.60.230. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court((, or by the county canvassing board reconvened specifically for that purpose)). The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-030 County auditor's abstract of votes. ((No later than fourteen days following any primary or special election and twenty-one days following any general election)) The county canvassing board shall meet and canvass all ballots. Upon completion of this canvass fourteen days after a primary or special election and twenty-one days after a general election, ((the board shall direct)) the county auditor ((to prepare)) shall present the auditor's abstract of votes ((as defined by WAC 434-262-010). The reconciliation of ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. The certification report required by RCW 29A.60.235 must be included with the abstract of votes and must be submitted at the time of the county certification.)), which must include:

(1) The number of registered voters eligible to vote in the election;

(2) The number of ballots cast in the election, by precinct;

(3) The votes cast for each race or issue, including write-ins, undervotes, and overvotes;

(4) Legislative and congressional district subtotals, if any; and

(5) The vote totals by county.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-264-010 Recount. (1) A recount is the process for retabulating the votes, including write-ins, for a specific office or issue on all valid ballots((, including write-ins)) cast in a primary or election.

(2) All questions of voter registration, voter qualification, and voter intent previously considered during the original count shall not be reconsidered during a recount. If a ballot has been duplicated in accordance with WAC 434-261-005, the duplicate shall be counted.

(3) Prior to beginning the recount, the county auditor shall exercise due diligence to confirm that all returned ballots have been identified and reconciled, and that no ballots have been erroneously omitted from the original count, which may include:

- (a) Recheck all ballot deposit sites;
- (b) Contact the local post office to confirm that all returned ballots have been delivered to the elections office;
- (c) Recheck ballot storage containers in the ballot processing area, ballot tabulation area, canvassing board area, and vault; and
- (d) Recheck that all emptied return envelopes and security envelopes do not contain a ballot.

(4) If any ballots or votes are discovered during the recount process that were not counted or canvassed during the original count or during a previous recount, the ballots shall be presented to the county canvassing board in accordance with RCW 29A.60.050, and the county canvassing board shall determine whether such ballots are to be included in the recount.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

WAC 434-264-030 Observers((—Conduct)). (1)

Observers must be permitted to witness activities associated with the recount. One observer representing each candidate, or the proponents or opponents of a ballot measure, may be permitted to observe each counting board's process.

(2) In addition to the admittance of two observers for each side of a recount as required by RCW 29A.64.041, a county canvassing board is encouraged to request additional observers from each of the two major political parties, as space allows. If provided, the additional party observers may be stationed to observe each counting board's process and must be considered official observers of the recount.

(3) Priority for viewing space shall be given in the following order:

- (a) Candidates or their designated representative, or the designated representative for the proponents and opponents of a ballot measure;
- (b) Counsel for a candidate or ballot measure campaign;
- (c) Designated party observers;
- (d) Media;
- (e) General public.

(4) Any questions or objections by observers must be directed toward the county canvassing board, supervisory personnel or another designated staff person present at the recount. Under no circumstance may an observer interrupt the recount process in objection to the decision to count or not count a ballot.

The county auditor shall provide ((a copy of)) any additional guidelines that are established by the county canvassing board to each observer.

The county canvassing board or its designated representative may ask any observer who is causing a disruption to the recount process to leave the area.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-264-020	Recount—Restrictions.
WAC 434-264-040	Observers—Designated.
WAC 434-264-050	Observers—Priority.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-324-026 Voter registration form.

((STRICKEN GRAPHIC)

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the next page.

for more information

online www.vote.wa.gov

call 1-800-448-4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

*optional information

09/2009

Washington State Voter Registration Form

register online at www.vote.wa.gov

qualifications

if you mark no to either of these questions, do not complete this form

I am a citizen of the United States of America.

yes no

I will be at least 18 years old by the next election.

yes no

personal information

last name _____ first name _____ middle _____

date of birth (mm / dd / yyyy) _____ phone number* _____ male female

residential address (in Washington) _____

city _____ zip _____

mailing address (if different than residential address) _____

city _____ state / zip _____

email address* _____

I am in the Armed Forces (includes National Guard and Reserves)

I am a U.S. citizen living outside the U.S.

Washington driver's license / state ID #

if you do not have a Washington driver's license or state ID card, provide the last four digits of your Social Security number

x x x - x x - _____

oath

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here _____

date here _____

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name _____ first name _____ middle _____

former residential address _____ city _____ state / zip _____

((STRICKEN GRAPHIC))

instructions

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how to register to vote or update a registration

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Mail or deliver this form to your County Elections Office. Addresses are on the reverse side.

for more information

online www.vote.wa.gov

call 1-800-448-4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

Your name, address, gender and date of birth are public information.

12/2011

Washington State Voter Registration Form

register online at www.myvote.wa.gov

! qualifications

if you mark no to either of these questions, do not complete this form

yes no I am a citizen of the United States of America.

yes no I will be at least 18 years old by the next election.

personal information

last name _____ first _____ middle _____

male female

date of birth (mm / dd / yyyy) _____

residential address (in Washington) _____

city _____ ZIP _____

mailing address (if different than residential address) _____

city _____ state / ZIP _____

email address (optional) _____ phone number (optional) _____

I am in the Armed Forces (includes National Guard and Reserves).

I am a U.S. citizen living outside the U.S.

Washington driver license / state ID #

if you do not have a Washington driver license or state ID card, provide the last four digits of your Social Security number

x x x - x x - _____

declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for 30 days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here

date here

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name _____ first _____ middle _____

former residential address _____ city _____ state / ZIP _____

AMENDATORY SECTION (Amending WSR 06-11-041, filed 5/10/06, effective 6/10/06)

WAC 434-324-108 Incapacitated persons lacking voting rights—Notice from court. Upon receipt of a court order declaring an incapacitated person does not retain voting rights as outlined in RCW 11.88.010, the auditor must search his or her county election management system to determine whether the person is a registered voter. If the auditor determines the incapacitated person's name and other identifying information match, he or she must cancel the incapacitated person's voter registration and send notification to the secretary through the county election management system. ((The auditor must also send a copy of the court order to the secretary.)) After canceling an incapacitated person's registration, the auditor must send a cancellation notice to the incapacitated person using the last known address.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

WAC 434-324-036 County-to-county transfers. ((Pursuant to RCW 29A.08.420,)) A registered voter may transfer his or her registration to another county by submitting a new voter registration application((. Prior to sending a verification notice, the county auditor shall use the voter registration data base to verify whether the registration is a transfer, or returning a signed confirmation notice that provides the new address. The minimum information necessary to complete the transfer to the new county is name, residential address ((and)), a signature on the oath in RCW 29A.08.230, and either date of birth or state voter ID number. The new county may request additional information to confirm that the registration application is a transfer.))

NEW SECTION

WAC 434-324-087 Confirmation notice. (1) A confirmation notice sent to an inactive voter must be sent by first-class forwardable mail, and must include a response form that:

- (a) Is preaddressed and postage prepaid;
- (b) Includes either the voter's date of birth or state voter ID number;
- (c) Asks the voter to verify his or her current address; and
- (d) Asks the voter to sign the oath in RCW 29A.08.230.

(2)(a) If the response indicates that the voter has moved within the county, the auditor must transfer the voter's registration and send the voter an acknowledgment notice.

(b)(i) If the response is signed and indicates that the voter has moved to another county within Washington, the county auditor shall not cancel the voter but must immediately forward the confirmation notice to the county auditor in the voter's new county. The county auditor in the voter's new county must register the voter using the information and signature on the confirmation notice. The new county must transfer the registration from the old county to the new county and send the voter an acknowledgment notice.

(ii) If the response is not signed and indicates that the voter has moved to another county within Washington, the

county auditor shall not cancel the voter but must send the voter a registration application.

(c)(i) If the response is signed and indicates that the voter has moved out-of-state, the county auditor must cancel the voter.

(ii) If the response is not signed and indicates that the voter has moved out-of-state, the county auditor shall not cancel the voter.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

WAC 434-379-008 ((Signed)) Petition(s) requirements. ((1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the elections division for submission of the signed petitions to the secretary. Petitions submitted prior to or at the appointment that clearly bear insufficient signatures must be rejected pursuant to RCW 29A.72.160. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in an electronic Microsoft Word format.

((2) Signatures on initiative and referendum petitions submitted to the secretary may not be removed from the petition or eliminated from the signature count. Letters submitted to the secretary requesting the removal of one's own signature from a petition must be retained by the secretary as part of the public record for the petition.)) (1) Petitions must be at least eleven inches wide by fourteen inches long.

- (2) Petitions must include:
 - (a) The initiative or referendum number;
 - (b) The ballot title, which must include:
 - (i) The subject, not more than ten words;
 - (ii) The concise description, not more than thirty words; and
 - (iii) The question;
 - (c) The form and text required by:
 - (i) RCW 29A.72.110 for an initiative to the legislature;
 - (ii) RCW 29A.72.120 for an initiative to the people; or
 - (iii) RCW 29A.72.130 for a referendum measure;
 - (d) The warning in RCW 29A.72.140, printed on the front to cover at least four square inches;
 - (e) Numbered lines, not more than twenty, with space for each person to provide his or her:
 - (i) Signature;
 - (ii) Printed name; and
 - (iii) Address, city, and county where registered to vote;
 - (f) A one-inch margin on the bottom of the front side;
 - (g) The full text of the measure printed on the back; and
 - (h) The circulator's declaration printed on the back.

NEW SECTION

WAC 434-379-009 Processing filed petitions. (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment with the office of the secretary of state to file the signed petitions. Pursuant to RCW 29A.72.170,

the secretary of state must reject petitions until a sufficient number that meet the minimum signature requirement are filed together. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in electronic Microsoft Word format.

(2) Upon receipt of the petitions, the office of the secretary of state shall count the number of petitions received, and provide that total to the sponsor.

(3) A petition may not be rejected merely because it includes stray marks, scribbles, notes, or highlighting as long as the printed text on the petition is not illegible.

(4) A petition may not be rejected merely because the circulator's declaration on the back side of the petition is unsigned, or is signed with a stamp. AGO 2006 No. 13; *Washington Families Standing Together v. Secretary of State Sam Reed*, Thurston County Superior Court No. 09-2-02145-4, September 8, 2009.

(5) Once a petition is submitted to the office of the secretary of state, a person may not withdraw his or her signature from a petition. Letters submitted to the secretary of state requesting the removal of a signature from a petition must be retained by the secretary as part of the public record for the petition.

(6) Each petition must be reviewed for fraud, such as patterns of similar handwriting indicating forged signatures.

(7) Each signature line must be reviewed to invalidate:

- (a) Obscenities;
- (b) Lines with an out-of-state address;
- (c) Text that is not a name;
- (d) Duplicate names;
- (e) Lines that are crossed out and not readable;
- (f) Lines that include a name and address that both appear to be fictitious; or
- (g) Lines that are blank or unfilled.

(8) The following characteristics of a signature line do not, by themselves, invalidate the signature:

(a) A name that is fictitious with an address that does not appear to be fictitious. Lines that include a name that appears to not be fictitious but an address that does appear to be fictitious, or vice versa;

- (b) Lines that are crossed out but still readable;
- (c) Lines that are missing a printed name;
- (d) Lines that are missing any portion of the address;
- (e) Multiple lines that have similar handwriting, as long as the signature handwriting is not similar;

(f) Lines in which the signature, printed name, or address is written in the wrong field; or

(g) Signatures, printed names, or addresses written in the margin.

(9) After each signature line has been reviewed, the remaining signatures must be counted to obtain the total number of signatures submitted. That total must be provided to the sponsor.

(10) The secretary of state must verify either a random sample of the signatures submitted using the statistical formula authorized by RCW 29A.72.230 and established in WAC 434-379-010, or all of the signatures submitted. If the

measure does not qualify for the ballot based on a random sample, the secretary of state must proceed to a full check of all signatures submitted. The secretary of state must follow WAC 434-379-020 to verify signatures.

NEW SECTION

WAC 434-379-012 Acceptance of signatures. (1) The secretary of state must determine if the person who signed a petition is registered to vote. The information may be researched in voter registration records using first name, last name, address, or any combination thereof. A signature may not be rejected merely because:

(a) The person signed with a middle name, nickname, or initials instead of the first name in the voter registration records, as long as the handwriting is clearly the same;

(b) The last name on the petition differs from the last name in the voter registration records, as long as the addresses and the handwriting on the first name are clearly the same;

(c) The last name on the petition or in the voter registration records is hyphenated while the last name in the other source is not;

(d) The first name and last name on the petition are reversed in the voter registration records;

(e) The address on the petition does not match the address in the voter registration records;

(f) The handwriting on the printed name or address does not match the handwriting on the signature; or

(g) The voter is on inactive status.

(2) If the secretary of state is unable to locate the person in the voter registration records, the signature shall be rejected as not registered to vote.

(3) If the person is registered to vote, the signature on the petition sheet must be matched to the signature in the person's voter registration record using the standards in WAC 434-379-020. If the signature on the petition:

(a) Matches the signature in the voter registration record, the signature must be accepted.

(b) Does not match the signature in the voter registration record, the signature must be rejected.

(c) Matches the signature in the voter registration record but another signature on the petition has already been accepted for that voter, the subsequent signature must be rejected as a duplicate.

WSR 12-11-127

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-31—Filed May 23, 2012, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-01-114.

Title of Rule and Other Identifying Information: Insurance producer's, surplus line broker's, and title insurance agent's separate premium accounts.

Hearing Location(s): Insurance Commissioner's Office, TR 120, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, on June 28, 2012, at 10:00 a.m.

Date of Intended Adoption: June 29, 2012.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail jimt@oic.wa.gov, fax (360) 586-3109, by June 27, 2012.

Assistance for Persons with Disabilities: Contact Lorrie [Lori] Villaflores by June 27, 2012, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule will make clear and beyond question that the separate premium account may not be used as a personal asset by licensed producers and surplus line brokers and that premium taxes must be deposited into the account and cannot be withdrawn from the account, except for payment to the state or refund of unearned taxes.

Reasons Supporting Proposal: Some licensed producers and surplus line brokers have been treating the separate premium account as their personal asset by pledging the account as security for loans and withdrawing premium tax funds from the account for their personal use rather than maintaining the funds in the account until paid to the state. Although the commissioner believes the existing rule makes it clear that the separate premium account cannot be used as a personal asset of the licensee, a recent administrative decision has put this issue into question.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: RCW 48.15.180, 48.17-480, and 48.17.600.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Hamje, P.O. Box 40256, Olympia, WA 98504-0256, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no significant cost imposed by this proposed regulatory amendment on any business; this proposed amendment to the requirements for separate accounts simply clarifies that premium taxes are part of the insurance premiums that must be placed in one or more separate accounts, that adequate records are maintained to identify which of those funds are from Washington business, and that premium taxes deposited in a separate account are considered to be in trust and must be maintained in the account until they are paid to the state.

This clarification essentially restates provisions of RCW 48.17.480, 48.18.170, and 48.17.600 which require that premiums be placed in such separate accounts, require an accounting of these funds, and require that such accounts should be used to promptly pay "the person entitled to the funds." In the case of taxes assessed against collected insurance premiums, the state government is that person.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail jimt@oic.wa.gov.

May 23, 2012

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2010-09, filed 12/22/10, effective 1/22/11)

WAC 284-12-080 Requirements for separate accounts. (1) The purpose of this section is to effectuate RCW 48.15.180, 48.17.600 and 48.17.480 with respect to the separation and accounting of premium funds by insurance producers, title insurance agents and surplus line brokers, collectively referred to in this section as "producers." Pursuant to RCW 48.30.010, the commissioner has found and hereby defines it to be an unfair practice for any producer, except as allowed by statute, to conduct insurance business without complying with the requirements of RCW 48.15.180, 48.17.600 and this section.

(2) All funds representing premiums as defined in RCW 48.18.170, which includes premium taxes and commissions, and return premiums received on Washington business by a producer in his or her fiduciary capacity on or after January 1, 1987, ((shall)) must be deposited in one or more identifiable separate accounts which may be interest bearing.

(a) A producer ((may)) must not deposit ((no)) funds other than premiums as defined in RCW 48.18.170, which includes premium taxes and commissions and return premiums to the separate account except as follows:

(i) Funds reasonably sufficient to pay bank charges;

(ii) Funds a producer may deem prudent for advancing premiums, or establishing reserves for the paying of return premiums; ((and))

(iii) Funds for contingencies as may arise in the business of receiving and transmitting premiums or return premiums; and

(iv) Fees paid by insureds as permitted under RCW 48.17.270(2).

(b) A producer may commingle Washington premiums as defined in RCW 48.18.170, which includes premium taxes and commissions and return premiums with those produced in other states, ((but)) provided adequate records are maintained to identify the amounts for Washington business. There ((shall)) must be no commingling of any funds ((which would)) not ((be)) permitted by this section.

(3)(a) The separate account funds ((may)) must be:

(i) Deposited in a checking account, demand account, or a savings account in a bank, national banking association, savings and loan association, mutual savings bank, stock savings bank, credit union, or trust company located in the state of Washington. ((Such an)) The account must be insured by an entity of the federal government; or

(ii) Invested in United States government bonds and treasury certificates or other obligations for which the full faith and credit of the United States government is pledged for payment of principal and interest, and repurchase agreements

collateralized by securities issued by the United States government((, and bankers acceptances)). Insurers may, of course, restrict investments of separate account funds by their agent.

(b) A nonresident licensee, or a resident producer with affiliated operations under common ownership in two or more states, may utilize comparable accounts in another state provided such accounts otherwise meet the requirements of RCW 48.15.180, 48.17.600, 48.17.480 and this rule, and are accessible to the commissioner for purposes of examination or audit at the expense of the producer.

(4) Disbursements or withdrawals from a separate account ((shall)) must only be made for the following purposes ((only)), and in the manner stated:

(a) For charges imposed by a bank or other financial institution for operation of the separate account;

(b) For payments of premiums, directly to insurers or other producers entitled thereto;

(c) For payments of return premiums, which includes premium taxes, directly to the insureds or other persons entitled thereto;

(d) For payments of earned commissions and other funds belonging to the separate account's producer, directly to another account maintained by such producer as an operating or business account, but only to the extent that the premium funds for the policy or policies have actually been deposited into the separate premium account; ((and))

(e) For transfer of fiduciary funds, directly to another separate premium account which meets the requirements of this section;

(f) For payment of surplus line premium taxes to the state; and

(g) For payment of earned producer fees, but only to the extent that the fees were originally deposited in the separate premium account.

(5)(a) ((The entire premium received (including a surplus lines premium tax if paid by the insured) must be deposited into the separate account. Such)) The funds ((shall)) deposited in the separate premium account must be paid promptly to the insurer or to another producer entitled thereto, in accordance with the terms of any applicable agreement between the parties.

(b) Return premiums received by a producer and the producer's share of any premiums required to be refunded, must be deposited promptly to the separate account. ((Such)) The funds ((shall)) must be paid promptly to the insured or person entitled thereto.

(6)(a) ((Where)) When a producer receives a premium payment in the form of an instrument, such as a check, which is made payable to an insurer, general agent or surplus line broker, the producer may forward ((such)) the instrument directly to the payee if that can be done without endorsement or alteration. In ((such-a)) this case, the producer's separate account is not involved because the producer has not "received" any funds.

(b) If the producer receives a premium payment in the form of cash or an instrument requiring endorsement by the producer, ((such)) the premium must be deposited into the producer's separate account, unless the insurer entitled to such funds has established other procedures by written direc-

tion to a producer who is its appointed agent, which procedures:

(i) Recognize that ((such agent)) the producer is receiving premiums directly on behalf of the insurer; and

(ii) Direct the producer to give adequate receipts on behalf of the insurer; and

(iii) Require deposit of the proceeds into the insurer's own account or elsewhere as permitted by the insurer's direction.

Thus, for example, an insurer may utilize the services of a licensed insurance producer, acting as a "captive agent," in the sale of its insurance and in the operation of its places of business, and directly receive payments intended for it without ((such)) the payments being deposited into and accounted for through the licensed insurance producer's separate account. In ((such)) these cases, for purposes of this rule, the insurer, as distinguished from the insurance producer, is actually "receiving" the funds and is immediately responsible therefor.

(c) When a producer receives premiums ((in the capacity of)) as a surplus line broker, licensed ((pursuant to)) under chapter 48.15 RCW, after a binder or other written evidence of insurance has been issued to the insured, subject to the express written direction of the insurer involved, ((such)) the premiums, except premium taxes, may be removed from the separate account.

(7) The commissioner recognizes the practical problems of accounting for the small amounts of interest involved spread over a large number of insurers and insureds. Therefore, absent any agreement between the producer and the insured or insurer to the contrary, interest earned on the deposits held in the separate account may be retained by the producer and used to offset bank charges, establish reserves, pay return premiums, or for any of the purposes listed in subsection (2) of this section, or the interest may be removed to the operating account.

(8) A producer ((shall)) must establish and maintain records and an appropriate accounting system for all premiums ((and)) as defined in RCW 48.18.170, which includes premium taxes and commissions, return premiums, and fees received by the producer, and ((shall)) must make ((such)) the records available for inspection by the commissioner during regular business hours upon demand during the five years immediately after the date of the transaction.

(9) The accounting system used must effectively isolate the separate account from any operating accounts and segment or identify all Washington business from that of other states. All recordkeeping systems, whether manual or electronic must provide an audit trail so that details underlying the summary data, such as invoices, checks, and statements, may be identified and made available on request. ((Such-a)) The system must provide the means to trace any transaction back to its original source or forward to final entry, ((such)) as is accomplished by a conventional double-entry bookkeeping system. When automatic data processing systems are used, a description of the system must be available for review by the commissioner. A balance forward system (as in an ordinary checking account) is not acceptable.

(10)(a) A producer that is a business entity may utilize one separate account for the funds received by its affiliated

persons operating under its license, and ((such)) the affiliated persons may deposit the funds they receive in ((such)) this capacity directly into the separate account of their firm or corporation.

(b) Funds received by an insurance producer who is employed by and offices with another insurance producer may be deposited into and accounted for through the separate account of the employing insurance producer. This provision does not, however, authorize the insurance producer employee to represent an insurer as to which he or she has no appointment.

(11) Premium taxes deposited to the separate premium account are held in trust for the state and must be maintained in the account until paid to the state.

(12) The separate premium account is a fiduciary account and not the personal asset or account of the producer. A producer must not make withdrawals from the account except as provided in this section. The separate premium account must not be encumbered in any manner nor be pledged as collateral for a loan.

(13) For the purposes of this section, a commission is earned no earlier than when the policy is bound or effective.

WSR 12-11-128
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed May 23, 2012, 9:54 a.m.]

Supplemental Notice to WSR 12-05-112.

Preproposal statement of inquiry was filed as WSR 12-01-104 on December 21, 2011.

Title of Rule and Other Identifying Information: WAC 220-47-307, 220-47-311, 220-47-411 and 220-47-428, rules for commercial salmon fishing in Puget Sound.

Hearing Location(s): Natural Resources Building, Room 630, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, June 26, 2012, at 11:00 a.m. - noon.

Date of Intended Adoption: On or after June 26, 2012.

Submit Written Comments to: Rules Coordinator, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by June 19, 2012.

Assistance for Persons with Disabilities: Contact Tami Lininger by June 19, 2012, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes to three rules as proposed in WSR 12-05-112. These are WAC 220-47-311, 220-47-411, and 220-47-428. The department is also adding a rule, WAC 220-47-307, that was not included in the original CR-102.

Closures: For Puget Sound salmon closed areas, WAC 220-47-307, changes include:

The gillnet closure and purse seine coho release requirement in the Hale's Pass Area of 7B in September will be shortened to September 1-21. The area will be open to fishing for gillnets, and purse seine retention of coho will be

allowed during scheduled openings for Area 7B prior to September 1 and after September 21. Closure of the entire month was not necessary to meet conservation objectives for coho.

The portion of Area 7B that is on or near the Lummi Indian Reservation (as defined by the line described in the proposed rule) will be closed to fishing.

Season Structural Changes: For purse seine open periods, WAC 220-47-311, changes include:

Correction of fishing hours during the week of November 18 to match standard open hours for that management week in previous years;

Areas 7 and 7A, adjustment to open dates during chum fishery, per tribal agreement;

Area 7B, adjustment of schedule during the week of September 16 to match standard management weeks;

Area 7B, corrected date for week 46 Friday closing (11/16);

Area 8D, correction of closing time on October 8 to match standard open hours for that management week;

Areas 12 and 12B, addition of one open day in the final week of the season, to be consistent with last date of fishing permitted under the Hood Canal Salmon Management Plan;

All other changes were included in the previous filing in WSR 12-05-112.

For gillnet open periods, WAC 220-47-411, changes include:

Correction of fishing hours during the week of November 18 to match standard open hours for that management week in previous years;

Closure of Area 6D on September 24, per tribal agreement;

Areas 7 and 7A, adjustment to open dates during chum fishery, per tribal agreement and adjustments to dates of coho and chinook release and live box requirements to match previous years;

Area 7B, adjustment of schedule during the week of September 16 to match standard management weeks;

Area 8A, addition of 2-vessel limited participation opening on September 19, per industry request;

Area 10 and 11, switch Wednesday full and half night openings between weeks for the weeks of October 14 through November 4, per industry request, and extension of nightly hours to 9:00 a.m. for openings with no overlap with purse seine openings, per industry request;

Areas 12 and 12B, addition of one open day in the final week of the season, to match the end of the management period for early-normal timed chum as defined in the Hood Canal Salmon Management Plan;

Area 12C, correction of fishing days during the week of November 18 to remain consistent with Hood Canal openings;

Areas 8, 8A, 10, reinserted mesh restrictions for pink salmon management periods;

All other changes were included in the previous filing in WSR 12-05-112.

For beach seine open periods, WAC 220-47-428, changes include:

Area 12A, closure of fishery on August 20 to be consistent with the first day of fishing permitted under the Hood Canal Summer Chum Conservation Initiative.

Reasons Supporting Proposal: These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.045, and 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street, Olympia, (360) 902-2717; **Implementation:** Jim Scott, 1111 Washington Street, Olympia, (360) 902-2651; and **Enforcement:** Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Record Keeping, and Other Compliance Requirements of the Proposed Rule:

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business Is Likely to Need in Order to Comply with Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates, except in Area 12A, where the proposed rules allow the use of larger nets at the request of the affected businesses. However, the proposed rules do not require the purchase or use of larger nets. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That Are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

None - the proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington department of fish and wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements used in the previous years' salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not affect hydraulics.

May 23, 2012

Lori Preuss

Rules Coordinator

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the

northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - (1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: ((During the month of)) September 1 through September 21, closed to ((gill nets)) gillnets in the waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point

(48°34'35"N, 122°29'45"W), and then southeastward along that line to Fish Point. Nontreaty purse seiners fishing in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

(3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hood sport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-311 Purse seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	((10/10-)) 10/11, 10/14, 10/15, ((10/16-)) 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3((,-11/4, 11/5))
	7AM - 5PM	<u>11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10((,-11/11, 11/12))</u>
		Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).
7B, 7C:	-	((8/17, 8/24, 8/31)) <u>8/15</u>
7B, 7C:	6AM - 8PM	<u>8/22, 8/29, 9/5</u>
7B:	7AM - 8PM	((9/7)) <u>9/10, 9/12, 9/14</u>
	7AM - 7PM	((9/12, 9/14, 9/16)) <u>9/17, 9/19, 9/21</u>
	7AM (9/18) <u>9/23</u>	6PM ((10/29)) <u>10/27</u>
	7AM (10/31) <u>10/29</u>	4PM ((11/4)) <u>11/2</u>
	7AM (11/7) <u>11/5</u>	4PM ((11/11)) <u>11/9</u>
	7AM (11/14) <u>11/12</u>	4PM ((11/18)) <u>11/16</u>
	7AM (11/21) <u>11/19</u>	4PM ((11/25)) <u>11/23</u>
	((8AM)) 7AM (11/28) <u>11/26</u>	4PM ((12/2)) <u>11/30</u>
		Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.
((8	6AM - 8PM	<u>8/22, 8/24, 8/30, 9/4))</u>
8A:	((6AM - 8PM	<u>8/18, 8/23, 8/25, 8/29))</u>
	7AM - 7PM	Limited participation - two boats ((9/19, 9/26)) <u>9/17, 9/24)</u>
8D:	7AM - 7PM	((9/19, 9/26, 10/3)) <u>9/17, 9/24, 10/1, 10/8</u>
	7AM - 6PM	((10/10, 10/18, 10/24, 10/26, 11/1)) <u>10/16, 10/22, 10/24, 10/29</u>
	7AM - 5PM	<u>11/5, 11/7, ((11/9, 11/15)) 11/13, 11/20</u>
	((7AM - 4PM	<u>11/29</u>
10	6AM - 8PM	Limited participation - four boats (8/22, 8/24, 8/30))
10, 11:	7AM - 6PM	((10/18, 10/24, 10/26, 11/1)) <u>10/15, 10/23, 10/25, 10/29</u>
	7AM - 5PM	<u>((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12, 11/20</u>

AREA	TIME	DATE
	((7AM-- 4PM))	11/22)
12, 12B:	7AM - 6PM	((10/18, 10/24, 10/26, 11/1) 10/15, 10/23, 10/25, 10/29)
	7AM - 5PM	((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12, 11/20
12C:	7AM - 5PM	((11/7, 11/9, 11/15)) 11/6, 11/8, 11/12, 11/20
	((7AM-- 4PM))	11/21)

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-411 ((Gill net)) Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with ((gill net)) gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff ((gill net)) gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	9/21, 9/22, ((9/23)) 9/25, 9/26, 9/27, 9/28, ((9/29, 9/30)) 10/1, 10/2, 10/3, 10/4, 10/5, ((10/6, 10/7)) 10/8, 10/9, 10/10, 10/11, 10/12, ((10/13)) 10/15, 10/16, 10/17, 10/18, 10/19((, 10/20, 10/21))	5"
7, 7A:	7AM	Midnight; use of recovery box required	((10/10,)) 10/11, 10/14, 10/15, 10/17, 10/18, 10/19, 10/20
	7AM	Midnight	((10/16, 10/17, 10/18, 10/19, 10/20,)) 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10((, 11/11, 11/12))
7B, 7C:	7PM	8AM	NIGHTLY 8/12, 8/14, ((8/16, 8/17)) 8/15, 8/19, 8/20, 8/21, 8/22, ((8/23, 8/24)) 8/26, 8/28, 8/29, 8/30((, 8/31))
7B:	7AM 9/2	7AM ((the day following)) 9/7	((9/4, 9/5, 9/6, 9/7, 9/8, 9/11, 9/12, 9/13, 9/14, 9/15))
	7AM 9/9	7AM 9/13	
	7AM ((9/18)) 9/16	((Midnight 10/22))	5"
	((12:01AM-10/23))	7AM 9/20	
	7AM 9/23	Midnight ((10/29))	((6 1/4")) 5"
	7AM ((10/31))	10/27	
	6AM 10/29	4PM ((11/4)) 11/2	6 1/4"
	6AM ((11/7)) 11/5	4PM ((11/11)) 11/9	6 1/4"

AREA	TIME		DATE(S)	MINIMUM MESH
	6AM ((11/14)) <u>11/12</u>	-	4PM ((11/18)) <u>11/16</u>	6 1/4"
	((7AM- 11/21)) <u>6</u> AM 11/19	-	4PM ((11/25)) <u>11/23</u>	6 1/4"
	((8AM- 11/28)) <u>7</u> AM 11/26	-	4PM ((12/2)) <u>11/30</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to ((gill nets)) gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	((5AM	-	11PM	8/23, 8/25	5" minimum and 5 1/2" maximum
	5:30AM	-	11PM	8/29, 8/31	5" minimum and 5 1/2" maximum))

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift ((gill nets)) gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	((5AM	-	11:30PM	8/17	5" minimum and 5 1/2" maximum
	5AM	-	11PM	8/22, 8/24	5" minimum and 5 1/2" maximum
	5:30AM	-	11PM	8/31	5" minimum and 5 1/2" maximum))
	6PM	-	8AM	Limited participation; 2 boats only 9/19	5"
	6PM	-	8AM	NIGHTLY ((9/27, 9/28)) 9/25, 9/26	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	-	8AM	NIGHTLY ((9/18, 9/19)) 9/16, 9/20, ((9/21, 9/22, 9/25, 9/26)) 9/23, 9/27, ((9/28, 9/29, 10/2, 10/3)) 9/30, 10/4((10/5, 10/6))	5"
	6PM 9/17	-	8AM 9/20		5"
	6PM 9/24	-	8AM 9/27		5"
	6PM 10/1	-	8AM 10/4		5"
	5PM	-	8AM	((10/9, 10/10)) 10/7, 10/11((10/12, 10/13))	5"
	5PM 10/8	-	8AM 10/11		5"
	5PM	-	9AM	((10/16, 10/17)) 10/14, 10/18, ((10/19, 10/20, 10/23, 10/24)) 10/21, 10/25, ((10/26, 10/27, 10/30, 10/31)) 10/28, 11/1((11/2, 11/3))	5"
	((7AM	-	9PM	9/20, 9/21, 9/27, 9/28, 10/4, 10/5	5"))
	5PM 10/15	-	9AM 10/18		5"
	5PM 10/22	-	9AM 10/25		5"
	5PM 10/29	-	9AM 11/1		5"
	((7AM	-	8PM	10/11, 10/12, 10/18, 10/19, 10/25, 10/26, 11/1, 11/2	5"))
	6AM	-	6PM	((11/9, 11/10, 11/16, 11/17)) 11/7, 11/8, 11/14, 11/15, 11/21, 11/22	6 1/4"
	((7AM	-	6PM	11/23, 11/24	6 1/4"))
	6AM	-	4PM	((11/11, 11/18)) 11/9, 11/16, 11/23	6 1/4"
	((7AM	-	4PM	11/25	6 1/4"))

9A: Skiff ((gill net)) gillnet only, definition WAC 220-16-

046 and lawful gear description WAC
220-47-302.

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	((5AM	-	11PM	Limited participation - four boats (8/23, 8/25)	4 1/2" minimum and 5 1/2" maximum
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AREA	TIME			DATE(S)	MINIMUM MESH
	5:30AM	-	11PM	Limited participation - four boats (8/30)	4 1/2" minimum and 5 1/2" maximum))
Note: In Area 10 <u>fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods.</u> Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the ((gill net)) gillnet web enters the water, until the ((gill net)) gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.					
10, 11:	5PM	-	9AM	NIGHTLY 10/16, ((10/27)) <u>10/17, 10/21, 10/30, 10/31</u>	6 1/4"
	((5PM	-	8AM	NIGHTLY 10/25	6 1/4"))
	4PM	-	((8AM)) 9AM	NIGHTLY ((11/8, 11/10)) <u>11/4, 11/13, 11/18</u>	6 1/4"
	((3PM	-	8AM	NIGHTLY 11/20	6 1/4"))
	4PM	-	Midnight	NIGHTLY ((10/19, 11/2, 11/16, 11/23)) <u>10/24, 11/7, 11/14, 11/21</u>	6 1/4"
12A: Skiff ((gill net) only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of ((gill net)) gillnet gear.	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff ((gill net)) gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM	-	8PM	((10/17, 10/19, 10/25, 10/27, 10/31, 11/2)) <u>10/16, 10/18, 10/22, 10/24, 10/30, 11/1</u>	6 1/4"
	6AM	-	6PM	((11/8, 11/10, 11/14, 11/16)) <u>11/5, 11/7, 11/13, 11/15, 11/19</u>	6 1/4"
12C:	6AM	-	6PM	((11/8, 11/10, 11/14, 11/16)) <u>11/5, 11/7, 11/13, 11/15, 11/19, 11/21</u>	6 1/4"
	((7AM	-	6PM	<u>11/22, 11/24</u>	6 1/4"))

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending Order 11-165, filed 7/22/11, effective 8/22/11)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME		DATE(S)
12A:	7AM	-	8/21, 8/22, 8/23, 8/24, ((8/25, 8/26)) <u>8/27, 8/28, 8/29, 8/30, 8/31, ((9/1, 9/2)) 9/3, 9/4, 9/5, 9/6, 9/7, ((9/8, 9/9)) 9/10, 9/11, 9/12, 9/13, 9/14, ((9/15, 9/16)) 9/17, 9/18, 9/19, 9/20, 9/21, ((9/22, 9/23)) 9/24, 9/25, 9/26, 9/27, 9/28((9/29, 9/30))</u>
12H:	7AM	-	7PM

November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

WSR 12-11-129 PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed May 23, 2012, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-08-045.

Title of Rule and Other Identifying Information: Chapter 170-296A WAC, Licensed family home child care standards.

Hearing Location(s): Department of Early Learning (DEL), Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on June 27, 2012, at 6:00 p.m.

Date of Intended Adoption: Not earlier than July 30, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 586-0533.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator by June 25, 2012, (360) 725-4421.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are intended to update the rules for several purposes, including to:

- Correct the concentration of bleach and water solution for sanitizing and disinfecting.
- Make corrections to the requirements under notifiable conditions.
- Clarify requirements for cleaning, sanitizing, and disinfecting.
- Correct typographical errors.
- Readopt a rule related to emergency exit windows that was inadvertently left out of the small business economic impact statement.

Reasons Supporting Proposal: All proposed changes are being made to protect the health and safety of children. The changes are based on recommendations from the department of health and local health jurisdiction.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, Olympia Washington, (360) 725-2829; Implementation and Enforcement: DEL licensing offices, statewide.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Rule Development Process:

Negotiated Rule Making: Chapter 170-296A WAC was developed using a "negotiated rule-making" process under RCW 34.05.310 and 43.215.350. The NRMT included FHCC licensees, the Service Employees International Union (SEIU) Local 925 that represents FHCC licensees, DEL licensing and policy staff, Provider and Parent Advocates, and the statewide Child Care Resource and Referral (CCR&R) Network representatives.

1. Emergency exit platform: WAC 170-296A-4550 (4), an emergency exit window must have a place to land outside that is forty-eight inches or less below the window which may be either:

- (a) The ground; or
- (b) A deck, landing or platform constructed to meet current building codes.

Why the Rule Is Needed: Effective means of exiting the home during an emergency are necessary in order to safeguard and promote the health, safety, and well-being of children receiving child care and early learning assistance in a family home setting. Further, under RCW 43.215.005 (4)(c),

the health, safety and well-being of children is paramount over the right of any person to provide care.

Cost of Adding an Emergency Exit Platform: The average cost of a platform averages \$30.00 to \$43.00 per square foot. Costs may vary from area to area, based on materials and labor costs.

- \$37.72 is listed as the estimated price for decks and porches, in the Thurston County Building Feed Guide, which is based on the estimated construction cost per square foot as published by the International Code Council. Contacts with licensed contractors provided an estimate between \$30 and \$43 per square foot.

Efforts to Mitigate (Reduce) Costs of the Proposed Rules:

Not all family child care homes will require installation of an emergency exit platform. An emergency exit platform is only required if you are caring for children in a room on the second floor of a two story or split level home and you use a window more than four feet above grade as one of the two means of egress from the room and no fire sprinkler system is installed in the home.

- If you operate a child care in a living room or kitchen more than four feet above grade and there are two doors or doorways from the room that lead directly to two separate pathways to emergency exits, then an emergency exit platform is not required because no window is being used as an emergency exit. For example, a living room four feet above grade with a front door leading outside and another door leading to an outside deck with a stairway to the ground does not require a platform outside the window.
- If you operate a child care in a bedroom more than four feet above grade and one exit is a door to a pathway that leads to an emergency exit and the other exit is a door leading directly to the exterior of the building, then an emergency exit platform is not required because no window is being used as an emergency exit. For example, a bedroom four feet above grade with a door leading to a deck with a stairway to the ground and a door leading to a hallway that leads to the front door does not require a platform outside the window.
- If you operate a child care in a bedroom more than four feet above grade and one exit is a door to a pathway that leads to an emergency exit and the other exit is an emergency exit window, then an emergency exit platform is required. For example, a bedroom with a door leading to a hallway that leads to the front door and a window used as an exit requires a platform outside the window.

Impact of the Proposed Rules on Job Creation or Loss:

One-time Cost: New one-time costs imposed by the proposed rule on small businesses are estimated to range from \$480.00 to \$688.00. Actual costs to a new or current licensee will depend on individual factors such as: If the use or proposed use of the licensed child care space in the home requires installation; the height of the platform off the ground; specific costs of local building permits; and the type of materials used to build the platform.

Job Loss: Based on how the licensee chooses to meet the requirements of the proposed rule and whether certain conditions such as use or proposed use exist on the FHCC premises, these costs may impact the licensee's decision to employ paid staff, or the number of hours that the licensee uses paid staff in a given year. At a rate of \$8.50 per hour, the low end of compliance costs may result in the licensee foregoing paying about fifty-six hours of staff time in the first year. At the high end, compliance costs may result in the licensee foregoing paying an estimated one hundred five hours of staff time in the first year. Licensees may choose less costly or no cost options to comply with the rule, which would have a lower impact on their ability to hire staff.

Job Creation: The rules are not expected to result in significant job creation or loss.

A copy of the statement may be obtained by contacting DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504, phone (360) 725-4421, fax (360) 586-0533, e-mail Rules@del.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

May 22, 2012
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-0010 Definitions. The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

"Accessible to children" means areas of the facility and materials that the children can easily get to on their own.

"Agency" as used in this chapter, has the same meaning as in RCW 43.215.010 (1) ((and (1)))(c).

"Available" means accessible and ready for use or service.

"Bathroom" means any room containing a built-in flush-type toilet.

"Capacity" means the maximum number of children the licensee is authorized by the department to have in care at any given time.

"Child" means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

"Child abuse or neglect" has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

"Child care" means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

"Clean" or "cleaning" means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with

water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

"Confidential" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Denial of a license" means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

"Department" or **"DEL"** means the Washington state department of early learning.

"Developmentally appropriate" means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

"Discipline" means a method used to redirect a child in order to achieve a desired behavior.

"Disinfect" or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of ((appropriate concentration)) one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

"DOH" means the Washington state department of health.

"DSHS" means the Washington state department of social and health services.

"Enforcement action" means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

"Family home child care" means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

"Family living quarters" means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

"Fine" has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

"Inaccessible to children" means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

"Infant" means a child age birth through eleven months of age.

"Licensed space" means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

"Licensee" for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

"Licensor" means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

"MERIT" means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

"Modification of a license" means department action to change the conditions identified on a current license.

"Nonexpiring full license" or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

"Nonprescription medication" means any of the following:

- (a) Nonaspirin and aspirin fever reducers or pain relievers;
- (b) Nonnarcotic cough suppressants;
- (c) Cold or flu medications;
- (d) Antihistamines or decongestants;
- (e) Teething pain reducers;
- (f) Vitamins;
- (g) Ointments or lotions specially intended to relieve itching;
- (h) Diaper ointments and talc free powders specially used in the diaper area of children;
- (i) Sun screen;
- (j) Hand sanitizer gels; or
- (k) Hand wipes with alcohol.

"One year of experience" means at least twelve months of early learning experience as demonstrated by a resume and references:

(a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or

(b) As a Washington state:

(i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or

(ii) Family home child care licensee or qualified primary staff person.

"Overnight care" means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

"Personal needs" means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

"Physical restraint" means the practice of rendering a child helpless or keeping a child in captivity.

"Poison" for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

"Premises" means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

"Preschool age child" means a child age thirty months through five years of age who is not attending kindergarten or elementary school.

"Primary staff person" means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

"RCW" means Revised Code of Washington.

"Revocation" or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter 43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

"Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of ((appropriate concentration)) three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

"School age child" means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

"Screen time" means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

"Sleeping equipment" includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

"Staff" unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

"STARS" means the state training and registry system.

"Suspension of a license" means a formal department action to stop a license pending a department decision regarding further enforcement action.

"Toddler" means a child age twelve months through twenty-nine months of age.

"Unlicensed space" means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

"Unsupervised access" has the same meaning as "unsupervised access" in WAC 170-06-0020.

"WAC" means the Washington Administrative Code.

"Weapons" means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2325 Reporting notifiable condition to health department. ((The)) In the event a licensee ((must report a)) staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as defined in chapter 246-101 WAC, the licensee must report the diagnosis to the local health jurisdiction or the state department of health. Contact the local health jurisdiction for the list of notifiable conditions and reporting requirements.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3200 Health plan. The licensee must have a written health plan. The health plan must include:

- (1) Communicable disease procedures and exclusion of ill persons under WAC 170-296A-3210;
- (2) Immunization tracking under WAC 170-296A-3250 through 170-296A-3300;
- (3) Medication management under WAC 170-296A-3315 through 170-296A-3550;
- (4) Injury treatment under WAC 170-296A-3575 through 170-296A-3600;
- (5) Handwashing and hand sanitizers under WAC 170-296A-3625 through 170-296A-3675;
- (6) Caring for children with special health needs under WAC 170-296A-0050;
- (7) Cleaning, sanitizing, and disinfecting procedures;
- (8) A bloodborne pathogens plan under WAC 170-296A-1850; and
- (9) Notifying the health department when a licensee, staff person, volunteer, household member, or child in care is diagnosed with a notifiable condition as required under WAC 170-296A-2325.

A person excluded from the family home by the health department on the basis of such a diagnosis may not return to the family home until approved to do so by the health department.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3210 Communicable disease procedure. When the licensee becomes aware that he or she, a

household member, staff person or child in care has been diagnosed with any of the following communicable diseases:

Disease:	Also known as:
Chickenpox	Varicella
Conjunctivitis (bacterial)	Pink eye
Diphtheria	
E. coli infection	
Giardiasis	
Hepatitis A virus	
Invasive haemophilus influenza disease (except otitis media)	
Measles	
Meningitis (bacterial)	Meningococcal meningitis
Mumps	
Pertussis	Whooping cough
Rubella	German measles
Salmonellosis	Salmonella or "food poisoning"
Shigellosis	Shigella
Tuberculosis (active)	TB

(1) The licensee must, within twenty-four hours notify:

(a) The local health jurisdiction or DOH, except notice is not required for a diagnosis of chickenpox((,)) or conjunctivitis((, or invasive haemophilus influenza));

(b) The department; and

(c) Parents or guardians of each of the children in care.

(2) The licensee must follow the health plan before providing care or before readmitting the household member, staff person or child into the child care.

(3) The licensee's health plan must include provisions for excluding or separating a child, staff person, or household member with communicable disease as described in subsection (1) of this section or any of the following:

(a) Fever of one hundred one degrees Fahrenheit or higher measured orally, or one hundred degrees Fahrenheit or higher measured under the armpit (axially), if the individual also has:

- (i) Earache;
- (ii) Headache;
- (iii) Sore throat;
- (iv) Rash; or

(v) Fatigue that prevents the individual from participating in regular activities.

(b) Vomiting that occurs two or more times in a twenty-four hour period;

(c) Diarrhea with three or more watery stools, or one bloody stool, in a twenty-four hour period;

(d) Rash not associated with heat, diapering, or an allergic reaction; or

(e) Drainage of thick mucus or pus from the eye.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3750 Mats, cots and other sleeping equipment. (1) The licensee must provide mats, cots, or other approved sleeping equipment that are made of material that can be cleaned and sanitized as provided in WAC 170-296A-0010.

(2) Mats, cots, or other sleeping equipment must be in good repair, not torn or with holes or repaired with tape.

(3) A sleeping mat must be at least one inch thick.

(4) Mats, cots, or other sleeping equipment must be cleaned, sanitized, and air dried:

(a) At least once a week or as needed if used by one child; or

(b) Between each use if used by different children.

(5) ~~((a)) If a bleach solution is used to sanitize, the solution must be one quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.~~

(6)) When in use, mats, cots, or other sleeping equipment must be arranged to allow the licensee or staff to access the children.

((7)) (6) Mats, cots, and other sleeping equipment must be stored so that the sleeping surfaces are not touching each other, unless they are cleaned and sanitized after each use.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3875 Cleaning and sanitizing toys. ((1)) The licensee must clean and sanitize toys as provided in WAC 170-296A-0010:

((a)) (1) Before a child plays with a toy that has come into contact with another child's mouth or bodily fluids;

((b)) (2) After being contaminated with bodily fluids or visibly soiled; or

((e)) (3) Not less than weekly when the toys have been used by the children.

((2)(a)) ~~If a bleach solution is used to sanitize, the solution must be three quarter teaspoon of bleach to one quart of cool water;~~

~~(b) If another sanitizer product is used, it must be labeled as approved for food contact surfaces, used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and rinsed if required by the product instructions.)~~

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-3925 Cleaning, sanitizing, and disinfecting table. (1) The following table describes the minimum frequency for cleaning, sanitizing, or disinfecting items in the licensed space.

CLEANING, SANITIZING, AND DISINFECTING TABLE			
	"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY
((1)) (a) Kitchen countertops/tabletops, floors, doorknobs, and cabinet handles.	X	Sanitize <u>(see sub-section (3) of this section)</u>	Daily or more often when soiled.
((2)) (b) Food preparation/surfaces.	X	Sanitize <u>(see sub-section (3) of this section)</u>	Before/after contact with food activity; between preparation of raw and cooked foods.
((3)) (c) Carpets and large area rugs/small rugs.	X		((a)) (i) Vacuum daily. ((b)) (ii) Installed carpet - Clean yearly or more often when soiled <u>using a carpet shampoo machine, steam cleaner, or dry carpet cleaner</u> . ((e)) (iii) Small rugs - Shake outdoors or vacuum daily. Launder weekly or more often when soiled.
	X	Sanitize <u>(see sub-section (3) of this section)</u>	((d)) (iv) Removable rugs - May be used in the bathroom. They must be easily removable and able to be washed when needed. Launder and sanitize weekly or more often when soiled.
((4)) (d) Utensils, surfaces/toys that go in the mouth or have been in contact with other body fluids.	X	Sanitize <u>(see sub-section (3) of this section)</u>	After each child's use; may use disposable, one-time utensils.
((5)) (e) Toys that are not contaminated with body fluids and machine-washable cloth toys. Dress-up clothes (not worn on the head or come into contact with the head while dressing). Combs/hair-brushes, (none of these items should be shared among children).	X	Sanitize <u>(see sub-section (3) of this section)</u>	Weekly or more often when visibly soiled.

CLEANING, SANITIZING, AND DISINFECTING TABLE			
	"X" means CLEAN	And SANITIZE or DISINFECT	FREQUENCY
((6)) (f) Bedding, blankets, sleeping bags, individual sheets, pillowcases (if used).	X	Sanitize (see sub-section (3) of this section)	Weekly or more often when soiled. Items that are put in the washing machine must be cleaned by using laundry detergent and sanitized by temperature (hot or warm water cycle) or chlorine bleach.
((7)) (g) Wash cloths or single use towels.	X	Sanitize (see sub-section (3) of this section)	After each use.
((8)) (h) Hats and helmets.	X		After each child's use or use disposable hats that only one child wears.
((9)) (i) Cribs and crib mattresses.	X	Sanitize (see sub-section (3) of this section)	Weekly, before use by different child, and more often whenever soiled or wet.
((10)) (j) Handwashing sinks, faucets, surrounding counters, soap dispensers, doorknobs.	X	Disinfect (see sub-section (2) of this section)	Daily or more often when soiled.
((11)) (k) Toilet seats, toilet training rings, toilet handles, doorknobs or cubicle handles, floors.	X	Disinfect (see sub-section (2) of this section)	Daily or immediately if visibly soiled.
((12)) (l) Toilet bowls.	X	Disinfect (see sub-section (2) of this section)	Daily or more often as needed (e.g., child vomits or has explosive diarrhea, etc.).
((13)) (m) Changing tables, potty chairs (use of potty chairs in child care is discouraged because of high risk of contamination).	X	Disinfect (see sub-section (2) of this section)	After each child's use.
((14)) (n) Waste receptacles.	X		Daily or more often as needed.

(2) "Disinfect" or "disinfecting" means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one tablespoon of chlorine bleach to one quart of cool water; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

(3) "Sanitize" means to reduce the number of microorganisms on a surface by the process of:

(a) Cleaning and rinsing, followed by using:

(i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water; or

(ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or

(b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4325 Stairs. (1) If there are stairs in the licensed space, the licensee must:

(a) Keep the stairway well lit;

(b) Keep the stairway free of clutter; and

(c) Have a handrail not higher than ((thirty)) thirty-eight inches high or sturdy slats on one side of the stairs.

(2) The licensee must provide a pressure gate, safety gate, or a door to keep the stairs inaccessible to infants and toddlers when not in use.

(3) Openings between slats or on pressure gates or safety gates must not be larger than three and one-half inches wide.

READOPTED SECTION (Readopting WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4550 Emergency exit windows. (1) Any window used as an emergency exit window must:

(a) Remain unlocked during operating hours, except a manufacturer-installed latch may be latched;

(b) Be designed to open from the inside of the room without the use of keys, tools or special knowledge; and

(c) Be easy to open to the full open position.

(2) An emergency exit window must be at least five point seven square feet of opened area, except emergency exit windows on the ground floor may be five square feet of opened area. When open, the window opening must be at least:

(a) Twenty inches wide; and

(b) Twenty-four inches tall.

(3) An emergency exit window must have an interior sill height of forty-four inches or less above the interior floor. If the interior sill height is more than forty-four inches above the interior floor, a sturdy platform (which may be a table or other device) may be used to make the distance forty-four inches or less to the interior window sill. The platform must be in place below the window sill at all times during operating hours.

(4) An emergency exit window must have a place to land outside that is forty-eight inches or less below the window which may be either:

(a) The ground; or

(b) A deck, landing or platform constructed to meet current building codes.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4650 Bathroom floors. (1) Floors in a bathroom or toileting area must have a washable surface and be resistant to moisture. The floor must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often if needed.

((a) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;

((b) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions, including but not limited to quantity used, time the product must be left in place, and adequate time to allow the product to dry.))

(2) Removable rugs may be used in the bathroom. The rugs must be laundered and sanitized as provided in WAC 170-296A-0010 at least weekly or more often if needed.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-4950 Rails on platforms, decks, and stairs. (1) Platforms or decks (not including play equipment) used at any time for child care activities with a drop zone of more than eighteen inches must have guardrails in any area where there are no steps.

(2) Outdoor stairs with four or more steps must have slats (balusters) or a hand rail not higher than ((thirty)) thirty-eight inches high on at least one side. Openings between the slats must be no wider than three and one-half inches. This requirement does not apply to outdoor play equipment with stairs.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-5175 Wading pools—Defined—Supervision. (1) A wading pool:

(a) Is an enclosed pool with water depth of two feet or less measured without children in the pool; and

(b) Can be emptied and moved.

(2) When a wading pool on the premises is intended for use by the children, the licensee must:

(a) Directly supervise or have a primary staff person directly supervise the children;

(b) Obtain written permission from each child's parent or guardian to allow the child to use a wading pool;

(c) Maintain staff-to-child ratios when children are in a wading pool;

(d) Keep infants or toddlers in the wading pool within reach of the licensee or staff;

(e) Use a door alarm or bell to warn staff that children are entering the outdoor area when pool water could be accessed, or keep the wading pool empty when not in use;

(f) Empty the pool daily; and

(g) Clean and disinfect the pool as provided in WAC 170-296A-0010 daily or immediately if the pool is soiled with urine, feces, vomit, or blood(:

((i) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;

((ii) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry)).

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7075 Infant and toddler sleeping or napping equipment. (1) The licensee must:

(a) Provide and use a single level crib, toddler bed, playpen or other sleeping equipment for each infant or toddler in care that is safe and not subject to tipping. The equipment must be of a design approved for infants or toddlers by the U.S. Consumer Product Safety Commission (see WAC 170-296A-7085 regarding approved cribs)((-));

(b) Provide sleeping or napping equipment with clean, firm, and snug-fitting mattresses that do not have tears or holes or is repaired with tape((-));

(c) Provide mattresses covered with waterproof material that is easily cleaned and sanitized((-));

((i) If a bleach solution is used to sanitize, the solution must be three quarters teaspoon of chlorine bleach to one quart of cool water;

((ii) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)) as provided in WAC 170-296A-0010:

(d) Arrange sleeping equipment to allow staff access to children;

(e) Remove sleeping children from car seats, swings or similar equipment; and

(f) Consult with a child's parent or guardian before the child is transitioned from infant sleeping equipment to other approved sleeping equipment.

(2) Children able to climb out of their sleeping equipment must be transitioned to an alternate sleeping surface.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7225 High chairs. (1) If the licensee uses high chairs in the child care, each high chair must:

- (a) Have a base that is wider than the seat;
- (b) Have a safety device that prevents the child from climbing or sliding down the chair;
- (c) Be free of cracks and tears; and
- (d) Have a washable surface.

(2) When a child is seated in a high chair, the chair's safety device must be used to secure the child.

(3) The licensee or staff must clean and sanitize high chairs as provided in WAC 170-296A-0010 after each use.

((a)) If a bleach solution is used to sanitize, the solution must be one-quarter teaspoon of chlorine bleach to one quart of cool water;

((b)) If another sanitizer product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7250 Diapering and toileting. (1)

The licensee must provide a diaper changing area that is separate from any area where food is stored, prepared or served.

(2) The diaper changing area must:

(a) Have a sink with hot and cold running water close to the diaper changing area. The sink must not be used for food preparation and clean up;

- (b) Have a sturdy surface or mat that is:
- (i) Not torn or repaired with tape;
- (ii) Easily cleanable;
- (iii) Waterproof; and

(iv) Large enough to prevent the area underneath from being contaminated with bodily fluids.

(3) The diapering area must be cleaned and disinfected as provided in WAC 170-296A-0010 between each use.

((a)) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water;

((b)) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.))

(4) A nonabsorbent, disposable covering that is discarded after each use may be used on the diaper changing mat.

(5) The diaper changing surface must be free of all other items not used in diapering the child.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7375 Potty chairs or modified toilet seats. (1) When potty chairs are used, the licensee or staff must immediately after each use:

- (a) Empty the potty chair into the toilet; and
- (b) Clean and disinfect the potty chair.

(2) The floor under the potty chairs must be made of a material that is resistant to moisture.

(3) When a modified toilet seat is used, it must be cleaned and disinfected as provided in WAC 170-296A-0010 daily or more often when soiled.

((a)) If a bleach solution is used to disinfect, the solution must be one tablespoon of chlorine bleach to one quart of cool water;

((b)) If another disinfectant product is used, it must be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.

((5))) If a sink or basin is used to clean a potty chair or modified toilet seat, the sink or basin must be cleaned and disinfected afterwards.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7700 Washing dishes. The licensee or staff must wash dishes thoroughly after each use by one of the following methods:

(1) Automatic dishwasher, using the sanitizing cycle if available; or

(2) Handwashing method, by emersion in hot soapy water, rinse, sanitize as provided in WAC 170-296A-0010 and air dry((

((a)) If a bleach solution is used to sanitize, the solution must be three-quarters teaspoon of chlorine bleach to one gallon of cool water;

((b)) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry)).

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-7750 Food preparation area. (1) The licensee or staff must clean and sanitize food preparation and eating surfaces as provided in WAC 170-296A-0010 before and after use. The licensee's food preparation area must:

(a) Have surfaces that are free of cracks and crevices; and

(b) Have a floor area made of a material that is resistant to moisture.

(2) The licensee must not allow pets in the food preparation area while food is being prepared or served.

(3) The licensee may use the kitchen for other child care activities provided there is continual supervision of the children.

((a)) If a bleach solution is used to sanitize surfaces, the solution must be one tablespoon of chlorine bleach to one gallon of cool water;

((b)) If another sanitizer product is used, it must be labeled as approved for food contact surfaces and be used strictly according to manufacturer's label instructions including, but

~~not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry.)~~

**WSR 12-11-130
PROPOSED RULES
BELLEVUE COLLEGE**

[Filed May 23, 2012, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-05-013.

Title of Rule and Other Identifying Information: WAC 132H-142-010 - 132H-142-080, first amendment activities for Community College District VIII.

Hearing Location(s): Bellevue College, Room B201A, 3000 Landerholm Circle S.E., Bellevue, WA 98007, on June 28, 2012, at 2:00 p.m. - 3:00 p.m.

Date of Intended Adoption: July 1, 2012.

Submit Written Comments to: Lisa Corcoran, 3000 Landerholm Circle S.E., Bellevue, WA 98007, e-mail lisa.corcoran@bellevuecollege.edu, fax (425) 564-2301, by June 5, 2012.

Assistance for Persons with Disabilities: Contact Sallee Hibbard by June 1, 2012, TTY (425) 564-4184 or (425) 564-2209.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed changes is to clarify the existing WAC. The college is clarifying the use of college properties for first amendment activities and updating policy to reflect current practices. The revised structure also provides for a more logical sequencing of information to improve understanding of guidelines and the results of violations.

Reasons Supporting Proposal: The current Bellevue College WAC does not clearly define the penalties for violations, nor does it reflect current practice. The revised WAC will provide an accord between policy and practice.

Statutory Authority for Adoption: Chapter 34.05 RCW and RCW 28B.50.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting: Lisa Corcoran, Bellevue College, A100, (425) 564-2302; Implementation: Ray White, Bellevue College, B202, (425) 564-2446; and Enforcement: Tommy Vu, Bellevue College, K100, (425) 564-5710.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This policy does not impact small business.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Lisa Corcoran, 3000 Landerholm Circle S.E., Bellevue, WA 98007, phone (425) 564-2302, fax (425) 564-2261, e-mail lisa.corcoran@bellevuecollege.edu.

May 23, 2012
Lisa Corcoran
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-015 Definitions. For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Bellevue Community College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Bellevue Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

College facilities include all buildings, structures, grounds, office space and parking lots.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's facilities use policy.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-020 Statement of purpose. Bellevue Community College District VIII is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities and grounds are dedicated and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Bellevue Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

NEW SECTION

WAC 132H-142-025 First amendment activities and protection of the college mission. The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted

and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-030 Request for use of facilities.

Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") (~~(shall)~~) are encouraged to provide notice to the ((campus public safety department)) student programs office no later than ((forty-eight)) twenty-four hours prior to the event along with the following information:

(1) The name, address and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(2) The name, address and telephone number of a contact person for the sponsoring organization; and

(3) The date, time and requested location of the event; and

(4) The nature and purpose of the event; and

(5) The type of sound amplification devices to be used in connection with the event, if any; and

(6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet (3' x 5') and no individual may carry more than one sign.

((If more than thirty people are expected to participate in the event, the event must be held in the southern courtyard, just north of the Carlson Theater.))

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the ((campus public safety department)) student programs office no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.

There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings for personal habitation, or the erection of tents or other shelters or structures for the purposes of personal habitation.

Information may be distributed as long as it is not obscene or libelous or does not advocate or incite imminent unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designed for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site designated for non-college groups. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

- Such activities serve educational purposes of the college; and

- Such activities are under the sponsorship of a college department or office or officially chartered student club.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

All fire, safety, sanitation or special regulations specified for the event are to be obeyed.

The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

The event must not interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Bellevue Community College, local ordinances and/or state or federal laws.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-142-040 Additional requirements for noncollege groups. The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled

classes) where it is reasonably anticipated that more than five hundred people will attend the college event or activity.

College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities as identified in this policy.

The college designates the following area(s) as the sole limited public forum area(s) for use by noncollege groups for first amendment activities on campus:

- Building C courtyard area for groups less than thirty; and
- Southern courtyard, just north of Carlson Theater if over thirty participants are expected.

NEW SECTION

WAC 132H-142-075 Trespass. Noncollege groups who violate these regulations will be advised of the specific nature of the violation, and if they persist in the violation, will be requested by the campus president or designee to leave the college property. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college facilities of the person or group of persons requested to leave, and subject such individuals to arrest under provisions of chapter 9A.52 RCW or municipal ordinance.

Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

Persons who violate a district policy or rule may have their license or privilege to be on district property revoked and be ordered to withdraw from and refrain from entering upon any district property. Remaining on or reentering district property after one's license or privilege to be on district property has been revoked shall constitute trespass and such individual shall be subject to arrest for criminal trespass.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132H-142-080

First amendment activities and protection of the college mission.

**WSR 12-11-131
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket UW-120246—Filed May 23, 2012, 10:25 a.m.]

Original Notice.

Title of Rule and Other Identifying Information: WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Ever-

green Park Drive S.W., Olympia, WA 98504-7250, on July 27, 2012, at 1:30 p.m.

Date of Intended Adoption: July 27, 2012.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by June 25, 2012. Please include: "Docket UW-120246" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by July 20, 2012, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On April 26, 2012, MacKaye Harbor Water Company, Inc. (MacKaye) filed with the Washington utilities and transportation commission (commission) a petition, pursuant to RCW 34.05.330, requesting the commission initiate a rule making to amend WAC 480-110-205 Application of rules and 480-110-255 Jurisdiction, to increase the maximum average annual revenue per customer used to determine commission jurisdiction over water companies from \$471 to \$557. The commission currently regulates investor-owned water companies that serve one hundred or more customers, or have average annual revenue of more than \$471 per customer. The commission entered Order 01 on May 17, 2012, granting the petition and directing the filing of a proposed rule making (CR-102) in accordance with RCW 34.05.330 (1)(b).

Reasons Supporting Proposal: The requested rule making is beneficial to, or requested or supported by, the small businesses that it affects. The proposed rules would benefit small water companies (less than one hundred customers in the aggregate). Such companies should not be subject to commission jurisdiction unless their size or average annual revenues justify regulation. The revenue figure in the existing rule no longer reflects an appropriate jurisdictional threshold, and revising that amount would be beneficial to the small water companies that the commission currently does not regulate.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and 80.04.110.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Penny Ingram, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1249; Implementation and Enforcement: David W. Danner, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1208.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose any costs; therefore a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW

34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

May 23, 2012
David W. Danner
Executive Director
and Secretary

AMENDATORY SECTION (Amending Docket No. UW-040375, General Order No. R-519, filed 4/4/05, effective 5/5/05)

WAC 480-110-205 Application of rules. The rules in this chapter apply to any water company that distributes, sells, or supplies water, and that meets requirements for commission regulation or jurisdiction under RCW 80.04.010 and WAC 480-110-255 (Jurisdiction). This includes investor-owned water companies that meet the jurisdictional threshold of serving one hundred or more customers or have average revenue of more than ((four)) five hundred ((seventy-one)) fifty-seven dollars per customer per year.

AMENDATORY SECTION (Amending Docket No. UW-040375, General Order No. R-519, filed 4/4/05, effective 5/5/05)

WAC 480-110-255 Jurisdiction. (1) The commission only regulates investor-owned water companies that:

(a) Own, operate, control, or manage one or more water systems; except that control or management does not include management by a satellite management agency as defined in chapter 70.116 RCW if the satellite management agency is not an owner of the water company.

(b) Meet jurisdictional thresholds of one hundred or more customers, or have average revenue of more than ((four)) five hundred ((seventy-one)) fifty-seven dollars per customer per year.

If a water company serves customers	and has average annual revenue per customer	commission regulation
99 or less	\$((471)) <u>557</u> or less	No
99 or less	more than \$((471)) <u>557</u>	Yes
100 or more	\$((471)) <u>557</u> or less	Yes
100 or more	more than \$((471)) <u>557</u>	Yes

(2) The commission does not regulate the following providers of water service:

- (a) Cities, towns, or counties.
- (b) Public utility districts.
- (c) Water districts.
- (d) Local improvement districts.

(e) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service only to their owners or members.

(f) Homeowner associations, cooperatives and mutual corporations, or similar entities that provide service to non-members unless they serve one hundred or more nonmembers, or charge nonmembers more than ((four)) five hundred

((seventy-one)) fifty-seven dollars average annual revenue per nonmember.

(g) Entities or persons that provide water only to their tenants as part of the business of renting or leasing.

This may include:

- (i) Apartment buildings.
- (ii) Mobile home parks.
- (iii) Manufactured home rental communities.
- (iv) Office complexes.
- (v) Commercial or industrial parks.

(3) To determine jurisdiction, the commission considers only those customers receiving water. The commission does not consider customers who do not receive water, such as customers who have paid:

- (a) Water-availability letter fees.
- (b) Standby charges.
- (c) System-readiness fees.
- (d) Ready-to-serve charges.

(4) To calculate the average annual revenue per customer, the commission considers only the charges that water-receiving customers are billed on a recurring basis, other than contributions in aid of construction. For example, this includes money billed for flat-rate service or the metered base-charge and all usage charges.

(a) The commission does not include charges billed to customers who do not receive water, such as:

- (i) Water availability letter fees.
- (ii) Standby charges.
- (iii) System-readiness fees.
- (iv) Ready-to-serve charges.

(b) The commission does not consider contributions in aid of construction in determining jurisdiction. These contributions can be money, services or property. Payments can be made in a lump sum or financed over time. Examples of contributions in aid of construction include payments for:

- (i) Connection to system.
- (ii) Meter installation.
- (iii) System buy-in.
- (iv) Facilities charges.
- (v) Assessments for capital plant and equipment.

(5) The following example shows how to calculate the average annual revenue per customer for two hypothetical customers. The data for each customer are provided at the end of the example:

(a) Select the most recent twelve consecutive months.

Example: February 2004 through January 2005.

(b) For each customer who received water service during the twelve-month period, add the amount the customer was billed by the water company for items other than contribution in aid of construction items.

Example: Customer A billed \$340.
Customer B billed \$283.

(c) For each customer who received water service during the twelve-month period, add the number of months the customer received water service.

Example: Customer A received water service for twelve months.

Customer B received water service for nine months.

(d) Total the amount billed the customers during the twelve-month period.

Example:

		Billed by the Water Company During the <u>Twelve-Month Period</u>
Customer A		\$340
Customer B	+	<u>\$283</u>
Total Billed During Twelve- Month Period		\$623

(e) Total the number of months each customer received water service.

Example:

		Number of Months Received Water Service During the <u>Twelve-Month Period</u>
Customer A		12
Customer B	+	<u>9</u>

Total Months Received Water Service During the Twelve- Month Period 21

(f) Calculate the "Average Monthly Revenue Per Customer": Divide the "Total Billed During the Twelve-Month Period" by the "Total Months Received Water Service During the Twelve-Month Period."

Example:

Total Billed During the Twelve-Month Period	\$623
Total Months Received Water Service During the Twelve-Month Period	÷ <u>21</u>
Average Monthly Revenue Per Customer	\$29.67

(g) Calculate the "Average Annual Revenue Per Customer": Multiply the "Average Monthly Revenue Per Customer" times 12 months.

(A)	Average Monthly Revenue Per Customer	\$29.67
	Months in a Year	x <u>12</u>
(B)	Average Annual Revenue Per Customer	\$356.04

**DATA USED IN THE EXAMPLE
TO CALCULATE
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—
Customer A**

		Ready-to- Serve						Facilities Charge	Meter Base Charge	Meter Usage Charge
		Standby Charge	Charge	Connection Charge	Charge	Yes	Yes			
<u>Receive Water Service</u>	No	No	Yes	Yes	Yes	Yes	Yes			
<u>Contribution in Aid of Construction</u>	No	No	Yes	Yes	No	No	No			

<u>Year</u>	<u>Month</u>							<u>Total Billed</u>
		Standby Charge	Serve Charge	Connection Charge	Facilities Charge	Meter Base Charge	Meter Usage Charge	
2004	February					\$20	\$4	\$24
2004	March					\$20	\$5	\$25
2004	April					\$20	\$2	\$22
2004	May					\$25	\$5	\$30
2004	June					\$25	\$6	\$31
2004	July					\$25	\$12	\$37
2004	August					\$25	\$6	\$31
2004	September					\$25	\$4	\$29
2004	October					\$25	\$4	\$29

<u>Year</u>	<u>Month</u>					<u>Total</u>
						<u>Billed</u>
2004	November			\$25	\$3	\$28
2004	December			\$25	\$2	\$27
2005	January			<u>\$25</u>	<u>\$2</u>	<u>\$27</u>
		\$0	\$0	\$0	\$0	\$285
						\$55
						\$340

Number of months service	12	
Not Receiving Water		\$0
Receiving Water - Contribution in Aid of Construction		\$0
Receiving Water - Other than Contribution in Aid of Construction		<u>\$340</u>
Total customer billed during period		\$340

**DATA USED IN THE EXAMPLE
TO CALCULATE
AVERAGE ANNUAL REVENUE PER CUSTOMER**

**Example—
Customer B**

		Ready-to-		Meter	Meter
		Standby	Serve	Base	Usage
		<u>Charge</u>	<u>Charge</u>	<u>Charge</u>	<u>Charge</u>
<u>Receive Water Service</u>		No	No	Yes	Yes
Contribution in Aid of Construction		No	No	Yes	No

<u>Year</u>	<u>Month</u>					<u>Total</u>
						<u>Billed</u>
2004	February	\$7				\$7
2004	March	\$7				\$7
2004	April		\$12			\$12
2004	May			\$300	\$4,500	\$25
2004	June					\$25
2004	July					\$25
2004	August					\$25
2004	September					\$12
2004	October					\$37
2004	November					\$25
2004	December					\$10
2005	January					\$35
		\$14	\$12	\$300	\$4,500	\$25
						\$225
						\$58
						\$5,109
		Number of months service				9
						Not Receiving Water
						\$26
						Receiving Water - Contributions in Aid of Construction
						\$4,800
						Receiving Water - Other than Contribution in Aid of Construction
						<u>\$283</u>
						Total customer billed during period
						\$5,109

(h) To ensure that all customers are treated equitably, the commission will impute the same rates to any customers receiving free or reduced service that apply to other customers receiving comparable service on the same system.